

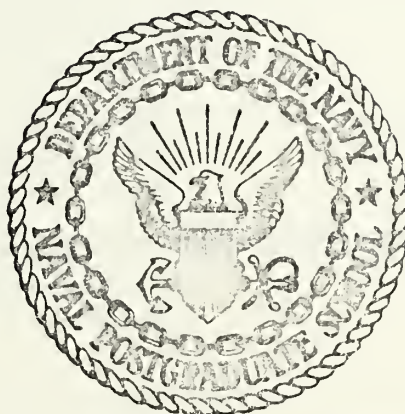
AN EXAMINATION OF AN SBA CONTRACT PROGRAM
TO AID SOCIALLY OR ECONOMICALLY DISADVANTAGED
ENTREPRENEURS AND ITS IMPACT ON THE NAVY
SHORE FACILITIES CONSTRUCTION AND
MAINTENANCE PROCUREMENT SYSTEM

William Casey Hilderbrand

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THESIS

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by

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June 1975

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June 1975

ABSTRACT

This thesis examines the Small Business Administration (SBA) program to use the authority granted by section 8(a) of the 1958 Amendment to the Small Business Act to aid socially or economically disadvantaged persons, and its impact on the Navy shore facilities construction and maintenance procurement system. The origin of the SBA's 8(a) authority and the consistency of its present use with the intent of Congress in granting that authority is examined including court challenges to that use. The current operational procedures followed by the SBA and the Navy in obtaining and providing support for the program are described and evaluated. A proposed method for evaluation of the Navy's support to the 8(a) program, and in particular the support provided by its shore facilities construction and maintenance manager, the Naval Facilities Engineering Command, is introduced. Also, recommendations for improvement in present operational procedures are presented and a possible alternative to the 8(a) program is discussed.

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I. INTRODUCTION

Section 8(a) of the 1958 Amendment to the Small Business Act grants the Small Business Administration (SBA) the authority to enter into contracts with other government departments and agencies, and to arrange for the performance of these contracts by negotiating or otherwise letting sub-contracts to small business concerns or others for the required goods or services.* To date, the SBA's policy regarding its 8(a) authority has been to use the authority to aid in the establishment and growth of firms owned and controlled by socially or economically disadvantaged persons.

This thesis examines this use of 8(a) authority by the SBA, in an effort to evaluate the effectiveness of the program and the efficiency of its administration by the SBA. Problems, inherent in the nature of such a program and those encountered during implementation, are examined and recommendations for improvements presented. A specific case, the efficiency of the 8(a) program administration and procedures as they relate to the Navy's shore facilities construction and maintenance program is investigated. Causes for variations in the past performance of the Navy and the Naval Facilities Engineering Command (NAVFAC), the Navy's shore facilities construction

*Appendix A provides the exact wording of this authority.

and maintenance agency, in providing support for the program were sought and suggestions for improvement offered.

The data used in this thesis was obtained primarily through field trips to Washington, D. C., Norfolk, Va., Charleston, S. C., Philadelphia, Pa., and San Francisco, Calif. where personal interviews were conducted with personnel from the General Accounting Office, and various SBA, Navy, and other government offices. Telephone interviews were also held with personnel from the above agencies as well as Department of Defense (DOD) personnel. Due to limited resources, interviews with 8(a) contractors were not conducted, although a personal interview was held with a Washington, D. C. lawyer who represented several 8(a) firms, was a consultant to 8(a) firms, and had conducted a study on the 8(a) program. In addition, a substantial amount of data regarding 8(a) contractors was obtained from reports by other researchers based on surveys of these contractors. Key personnel contacted are presented in Appendix B. In addition, reports and documents listed in the bibliography were researched and a questionnaire sent to five of NAVFAC's engineering field divisions to obtain further data for the thesis.

For those readers unfamiliar with the Small Business Administration and the Naval Facilities Engineering Command, a brief summary of the organization and mission of each is provided in Appendices C and D respectively. Due to time and financial restrictions, the authors were unable to visit the Pacific Division of NAVFAC. As a result, in obtaining

data from and about NAVFAC, the five CONUS EFD's were used as a source of data about Navy procurement offices involved in construction and maintenance contracting.

This introduction will provide the reader with a brief review of the circumstances and events which led to the SBA's present policy of restricting its 8(a) program to minority firms. Following this review will be a definition of the writers' philosophy concerning the future of the 8(a) program, and concluding the introduction will be a short discussion of the contents and purpose of each of the remaining sections of the thesis.

Although the 8(a) authority was granted the Small Business Administration in 1958, no action was taken to use this authority until 1967. In promulgating its 1958 regulations, the SBA took the position that the authority was only to be used in periods of emergency, although no definition was offered of what situation would constitute an emergency. [Ref. 18, p. 200] In spite of repeated statements by the Congress that this position was contrary to its (the Congress') intent*, and in the absence of any court cases which might have resolved the issue, the SBA continued to adhere to that position until as late as 1968. In response to Congressional inquiries as to why the SBA was not using its 8(a) authority

* See H.R. Final Report No. 2235, 86th Congress, 2nd Session 81 (1960); Hearings before Subcommittee of the Committee on Banking and Currency, 87th Congress, 1st Session at 262-264 (1961); Hearings on H. R. 4525 Before the Committee on Banking and Currency, 84th Congress, 1st Session at 97 (1955).

to increase the contracts awarded to small business, the SBA explained that it preferred to work with the procuring agencies to develop direct small business contacts with them rather than utilizing Section 8(a). [Ref. 5, p. 408] The SBA believed that the efforts to start and operate an 8(a) program would not be worthwhile in terms of developing small business. [Ref. 7, p. 1] As an indication of the low priority accorded the program by the SBA, the 1968 staffing for the program at the SBA level, was five persons. [Ref. 5, p. 411]

President Johnson found the 8(a) authority held by the SBA to be potentially an easily accessible tool by which he could rapidly respond to some of the pressures represented in the civil rights movement. On October 2, 1967, he announced the creation of the President's Test Cities Program, an experimental program designed to combat hard-core unemployment. [Ref. 7, p. i] Under this program, the SBA used its 8(a) powers to award eight subcontracts totaling \$10.5 million during FY 68. Used to meet procurement requirements of the Department of Defense, the subcontracts were awarded to established manufacturing firms. [Ref. 3, p. i] In turn, the firms agreed to locate in or near the ghetto areas of five cities and train the area's unemployed to perform the requirements of the contracts. Several months into the program, the SBA realized that mere employment did not provide an adequate solution to the problems of the hard-core unemployed, and began to consider whether business ownership would provide a better vehicle for low-income and minority people to enter America's economic mainstream. [Ref. 7, p. 2]

The Small Business Administration moved in early 1969 to change the objectives of the 8(a) program to one of establishing and promoting the growth of minority small business firms. In October of that year, Executive Order 11458 provided support for the change in the program objectives by instructing the appropriate Federal departments and agencies to establish programs to strengthen minority business enterprises.

Contractual support from the Department of Defense for the 8(a) program continued in FY 69 with DOD providing \$8.5 million of the \$8.9 million in contracts awarded by the SBA in that year. [Ref. 39] As the 8(a) program continued to expand, the SBA altered its "emergency use" policy in 1970 by deleting this restriction. [Ref. 17, p. 700] Further evidence of the SBA's new attitude towards the potential of 8(a) was manifested by the growth in the number of SBA employees associated with the program to 69 at the start of FY 72. [Ref. 5, p. 411]

Emphasis within the Executive branch on the 8(a) program has remained relatively constant from 1972 to the present. As recently as December 1974, the President issued a memorandum to the members of his Cabinet stressing his interest in assistance to disadvantaged minorities and seeking improvement in the Government's minority business development program. [Ref. 34] The number and dollar value of contracts awarded by the SBA has grown steadily from 28 contracts totaling \$8.9 million in FY 69 to 2303 contracts totaling \$279.2 million for FY 74. The progress in terms of numbers of companies,

contracts, and total dollar volume of awards can be seen in Table 1.

Table 1.
Summary of 8(A) Companies and Contract Awards
by Fiscal Years

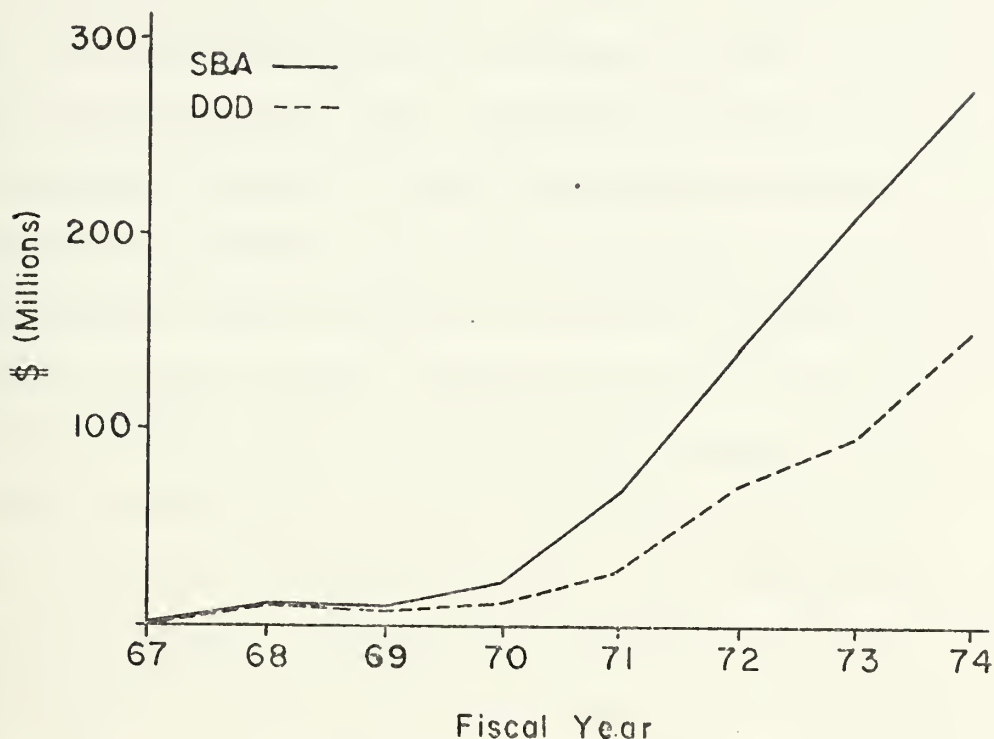
Fiscal Years	Number of Contracts	Amount of Contracts	Companies Awarded Contracts
1968	8	10,493,524	7
1969	28	8,857,771	21
1970	199	22,520,209	144
1971	809	68,415,378	508
1972	1646	143,334,654	924
1973	1977	213,262,772	1070
1974	2303	279,239,960	1156

Source: Small Business Administration, Status Report of 8(a) contracts, Washington, Government Printing Office, March 31, 1975.

Department of Defense support during this period grew from \$8.5 million in FY 69 to \$148.1 million in FY 74. Figure 1 indicates the increase in total contract value (dollars) over this period of time. As can be seen in Figure 1, DOD has provided approximately 50% of all contracts awarded the SBA. Figure 1 will be found on the following page.

The SBA's restrictive interpretation as to the eligibility of only minority firms for the 8(a) program has not been agreed with universally, and several court cases have resulted. The basic argument in these cases has been that the use of the program to aid only minority firms is illegal because this restriction was not mentioned in the statute. In the most

Figure 1
Growth of SBA and DOD 8(a) Contract Awards



Source: Small Business Administration, Status Report of 8(a) Contracts, Washington, GPO, March 31, 1975, (figure drawn by authors).

decisive of these cases, Ray Baillie Trash Hauling, Inc. v. Kleppe, the Court of Appeals overturned a District Court ruling and found that the SBA's implementation of the 8(a) program was authorized by the Small Business Act of 1958. [Ref. 17, p. 710] The lower court ruled that the 8(a) program was not authorized by the Small Business Act and violated federal statutes requiring competitive bidding in government procurement. [Ref. 18, p. 201-203] Reversing this ruling, the Court of Appeals held, inter alia, that the Small Business Act, in addition to Congressional and Presidential mandates issued

after the passage of the Act, provides sufficient authority for the SBA's program. [Ref. 17, p. 697] Review of the Court of Appeal's decision was denied by the U. S. Supreme Court on February 19, 1974. Recently, the Congress indicated an increased interest in small business by passing a law written by the Senate Committee on Banking, Housing, and Urban Affairs, which directed the General Accounting Office to make a study of SBA's administration of all small business programs. [Ref. 15] The first audit interest of GAO was the 8(a) program and a report reflecting the results of the audit was issued on April 16, 1975. The GAO generally supported the program, although it indicated the existence of considerable potential for improvement in the administration of the program. [Ref. 7] Congressional hearings on the GAO report and findings were, at the time of this writing, being scheduled by the Subcommittee on SBA Oversight and Minority Enterprise, of the House Committee on Small Business. The GAO indicated that hearings were anticipated before other committees as well.

In view of the strong interest and support shown in the past by the Congress and the Executive Branch, and considering the lack of success in the courts by challengers to the 8(a) program, it is the opinion of the authors that the Congressional hearings will not result in legislation to the detriment of the program, but rather that the program will be a viable one for the future.

It is therefore the philosophy of the authors that the 8(a) program will continue to be used to aid minorities and, ergo, be in existence for the foreseeable future. The authors also believe the basic intent of the 8(a) program to be sound. Promoting the establishment and growth of minority firms will benefit not only those minority firms aided, but in the future, the entire country. Nevertheless, the present method of using a system designed for procurement, i.e., the Navy's shore facilities construction and maintenance acquisition system, for social purposes creates certain inherent inefficiencies in operation. The primary objective of the Navy's acquisition system is to procure goods and services at the right price, in the right quantity, at the right quality, in a timely fashion to satisfy the needs of the Navy. The traditional philosophy of the government procurement system has been that the formal advertising process is the surest method of meeting this objective. The 8(a) program, however, is based on using a negotiated process involving limited competition in which price is not a factor to meet its objective of promoting the establishment and growth of minority firms who in many cases have little or no prior experience in contracting. The program thus appears to run counter to the basic philosophy of the procurement system and creates considerable conflict in the minds of the procurement personnel involved. In the final chapter of this thesis, the authors present an alternative to the 8(a) program which they believe will resolve this conflict and act for the

benefit of both the minority contractor and the procuring agency. Nonetheless, guided by the philosophy that the program would remain in effect, the authors examined the existing system to determine improvements and changes in existing procedures which would enable the Navy to provide optimal support to the 8(a) program.

In searching for the optimum implementation system, the original intent of Congress in granting the 8(a) authority, as presented in Chapter II, is used as a base to measure program effectiveness. Chapter II also includes a review of the legal challenges to the program and the court rulings on the challenges. Chapter III traces through the present operation of the program, highlights problems which exist in administering the system, and presents recommendations for altering or changing the present system.

Chapter IV discusses the support given the program by the Navy, addressing in particular that provided by the Naval Facilities Engineering Command. The factors which influence the level of support which an agency can provide the 8(a) program are discussed and a system recommended which will account for these factors.

The concluding chapter is designed to bring the various sections of the thesis together. This chapter lists criteria which must be met before the program can be successful, summarizes all recommendations, and presents an alternative to the 8(a) program.

II. BACKGROUND

A. AN EXAMINATION OF THE INTENT OF THE SBA PROGRAM TO AID MINORITY CONTRACTORS

In order to gauge the effectiveness of any program, it is necessary that the original concept and the modifications through useage of the program be fully understood. Complete comprehension of the objectives of the 8(a) program requires an examination as to whether the intent and goals of the program in its pragmatic maturity are consistent with those of the program as originally conceived and planned. To address this question, the intent of the authors of the 8(a) legislation, and the Small Business Act (PL 85-536), which set forth the 8(a) authority, must be examined. This intent can then be compared with the present use of 8(a) by the Small Business Administration wherein the program is restricted to small businesses owned or destined to be owned by socially or economically disadvantaged persons.

The Small Business Act was not the first legislation enacted by the Congress to provide powers similar to 8(a) to aid small businesses. Therefore, a better indication of Congressional intent will be provided by reviewing the objectives of Congress in all of its legislation directed at small business. The objectives of Congress in using the Small Business Administration to express its concern for minorities must also be addressed in order to better understand any conflicts which arise from using one program to realize two

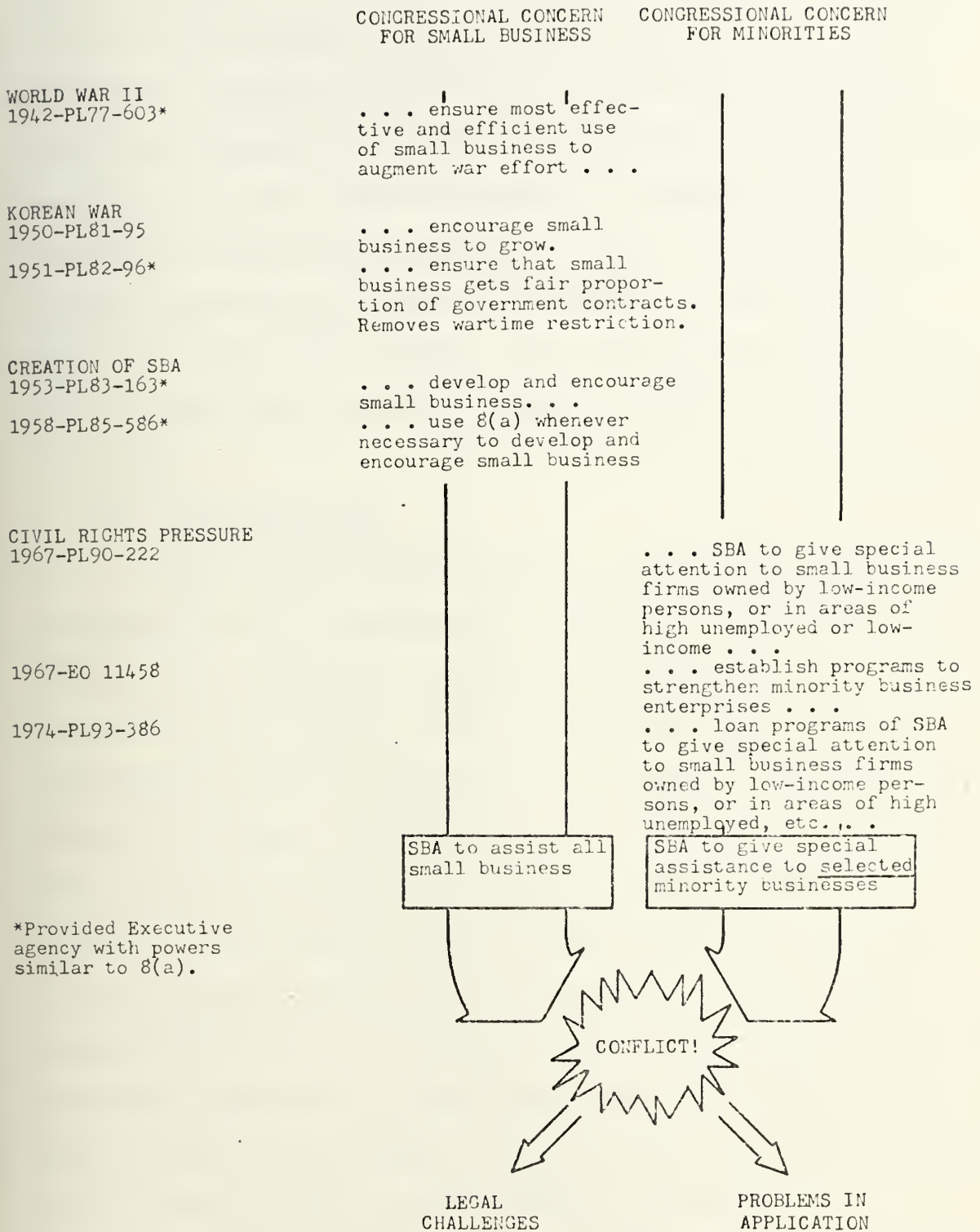
objectives; i.e., to aid all small businesses, and to aid minorities. These two objectives are at cross purposes. The primary objective of the SBA is to represent the interests of all small businessmen, while the 8(a) program as it is being practiced by the SBA appears to oppose these interests by seeking to aid minority firms through a reapportionment of the existing distribution of government contracts. Some of these contracts represent a current source of revenue to non-minority small business.

An overview of the legislative history of these two objectives is provided in Figure 2 which also indicates the nature of the conflicts which ensued when the SBA program was used to express twin concerns of the Congress. This chapter will trace the two expressions of Congressional concern indicated in Figure 2 from their inception to the present, and will then examine the legal challenges which were a manifestation of the conflict between the two objectives. The problems encountered in the implementation and administration of the program will be examined in the following chapter. Figure 2 will be found on the following page.

1. World War II

Congressional concern with a small business concept was first expressed at the beginning of World War II in a public law, directed at mobilizing the productive capacity of the nation's small business concerns. [Ref. 8] The Act was an expression of Congressional desire to ensure that the most efficient and effective utilization was made of those

Figure 2



*Provided Executive agency with powers similar to 8(a).

concerns in the augmentation of the war effort. This Act established the Smaller War Plants Corporation and provided it with the authority to enter into contracts with other government agencies obligating the Corporation to furnish articles, equipment, supplies, or materials to such agencies. Performance of the contracts was to be effected by the Corporation letting subcontracts to small business concerns for the manufacture, supply, or assembly of such items. [Ref. 8] Under this program, some 260 subcontracts totaling \$35.5 million were awarded to small business concerns. [Ref. 5, p. 407]

2. The Korean War

The Defense Production Act of 1950 [Ref. 9] provided a modification of Congressional interest in small business. The interest, expressed earlier, during World War II, in full utilization for the war effort of existing small business was augmented by an indication of concern for the protection of small business. The objective of the Act was to expand the country's productive facilities so as to meet the military demands of the Korean conflict without placing undue strain on the civilian sector of the economy. It was the sense of Congress that small business be encouraged to make the greatest possible contribution towards achieving this objective and that at least equal consideration be given them in the government's drive to meet the war demands. [Ref. 9]

The Defense Production Act was amended in July 1951 [Ref. 13] to provide a further vehicle for the implementation

of the Act's objectives in the form of the Small Defense Plants Administration. The SDPA's powers included the authority to contract with other government agencies, and in turn, obtain performance of the contract requirements through subcontracts with small business. In this Act, Congressional policy regarding small business directed that a fair proportion of the total purchases and contracts for supplies and services for the government should be placed with small business concerns. The restriction to times of war was also removed. [Ref. 13] Reports to Congress in 1953 indicated that the SDPA awarded only 7 contracts during its tenure. [Ref. 5, p. 407]

3. Creation of the SBA

The Congress continued to broaden its policy of aiding small business when it established the Small Business Administration in 1953 and granted to it subcontracting authority similar to that of the Small Defense Plants Administration. This was accomplished through the Small Business Act of 1953 (PL83-163) which followed by one month an amendment to the Defense Production Act (PL83-95) directing the termination and liquidation of the Small Defense Plants Administration. The use of the authority granted the SBA was no longer to be restricted to the mobilization of the nation's full productive capacity or support of the national defense program, but rather was to be used to encourage and develop the actual and potential capacity of small business to ensure the economic well-being and security of the nation

through the preservation and expansion of free competition. To accomplish this goal the Congress declared that the Government should aid, counsel, and protect insofar as possible, the interests of small business concerns.

Although the substance of 8(a) authority was contained in the 1953 Act, the Congress reiterated its intent in the 1958 Small Business Act (PL85-536), wherein it presented the procedures and authority of 8(a) in its present format. The 1958 Act contained essentially all the provisions of the 1953 Act in a revised format with some small but important changes, plus additional provisions directing the attention of the SBA toward ensuring the participation of small business concerns in research and development contracts. One of the changes to the 1953 Act of importance to this thesis was the specific declaration providing the SBA authority to utilize 8(a) whenever it determined such action necessary. Apparently Congress desired to clearly indicate there were no restrictions to the use of 8(a) even though no restrictions were contained in the 1953 Small Business Act. The net result of the 1958 Act was to create an agency, the Small Business Administration, which was to be the chief Federal advocate for all small businessmen, and in a stronger capacity than any of its predecessors.

Thus, by the late 1950's the intent of Congress regarding small business had been modified from its original concern of ensuring the full utilization of existing small business to support the war effort, and had evolved to an objective of supporting and promoting the viability of small

businesses in peacetime as well as war by ensuring them a fair proportion of all Government procurement. No specific attention was directed toward the minority groups or the socially or economically disadvantaged. In view of the generally "low profile" on the national level of minority groups during this period, it is the judgement of the writers that the failure of Congress to specifically address their needs in the Small Business Act was not an intentional omission on the part of Congress, but rather reflected the tempo of the times.

4. Civil Rights Pressure

The 1960's brought the various civil rights issues to the forefront and the Congress began to reflect its awareness of the national concern in this area in the legislation which it passed. The Congressional interest regarding minority small business was manifested in the 1967 Amendment to the Economic Opportunity Act (PL90-222). The purpose of this Act was to promote the full use of all existing government programs and procedures toward a goal of enabling low income families and individuals to secure the skills and knowledge necessary to obtain the opportunities needed for them to become self-sufficient. The Senate Committee on Labor and Public Welfare Report accompanying the Act specifically included "minority group members, especially in the ghetto," in these income groups. By this Act, the SBA was directed to assist in the establishment, preservation, and strengthening of small business firms "with special attention to small business concerns: (1) located in urban

areas with high proportions of unemployed or low-income individuals or, (2) owned by low-income individuals." [Ref. 17, p. 705]

5. Use of Section 8(a) of the Small Business Act

Shortly after the passage of the Amendment to the Equal Opportunity Act, President Johnson expressed further concern of the Executive branch with the implementation in October 1967 of the President's Test Cities Program. Using the SBA's 8(a) authority for the first time in 14 years, the program was aimed at providing jobs and training for the hard-core unemployed through the award of 8(a) subcontracts to both large and small business manufacturing firms.

Early in the program, the SBA became concerned that simply creating jobs might be an inadequate method of ensuring that hardcore unemployed would become part of America's economic mainstream. The SBA then focused its attention on business ownership opportunities as offering a better route to the economic mainstream for the minority and low-income people. In the following year, the SBA changed its objective to one of establishing and promoting the growth of minority business firms. This change coincided with the issuance of Executive Order 11458, instructing the appropriate Federal departments and agencies to establish programs to strengthen minority business enterprises.

A formal statement of its new objectives was set forth in 1970 when the Small Business Administration promulgated new regulations establishing the 8(a) program as a vehicle for providing assistance only to small business

concerns owned or controlled by socially or economically disadvantaged persons (13 CFR 124.8-1(c)). Concurrent with the issuance of these regulations, the President issued another Executive Order (11518) calling for increased representation of the interests of small business concerns, particularly minority owned business concerns within Federal agencies and departments. The concern expressed by the President in his Executive Order was supported by a Department of Commerce report to the President on minority business enterprise in June of 1970. Statistics in the report indicated that at the time, the minorities in question made up about 16% of the population, but accounted for only three (3) percentage of the 5,500,000 businesses in this country. [Ref. 5] A third order (Executive Order 11625), issued October 13, 1971, directed all Federal departments and agencies to continue all existing efforts to foster and promote minority business enterprises, and also endorsed the definition of a minority business firm provided by the SBA in its 1970 regulations as being "one owned or controlled by socially or economically disadvantaged persons."

Congress revised the emphasis of the Small Business Act in a 1974 amendment. This amendment (PL93--386) did not change the 8(a) section of the original Act, but did revise the loan policies set forth in the Act. The change directed the SBA to give special attention to the needs of small business concerns located in areas of high unemployment or low-income, and the needs of small businesses owned by low-income individuals. Interpreting this amendment as support for the

SBA's concern for minority firms, and noting that there has been no Congressional legislation specifically countering the SBA's application of Section 8(a), it is reasonable to conclude that SBA's interpretation is consistent with present Congressional intent.

B. LEGAL CHALLENGES TO THE USE OF 8(a)

Challenges to the SBA's use of the 8(a) program have been made both in and out of the courts. In 1969, several federal agencies questioned the efforts of the SBA to use its 8(a) authority for construction contracts. The agencies objected on the grounds that the wording of section 8(a), i.e., "... to furnish articles, equipment, supplies, or material ... " did not specifically list construction contracts. In response to these questions, the SBA requested a decision from the Comptroller General. In his decision (B-13274 of October 2, 1969) the Comptroller General made it clear that the program applied across the board to all types of procurement including construction, supply, and service contracts.

In the courts, there have been several cases challenging the Small Business Administration in its application of section 8(a).^{*} Plaintiff's challenges included alleged discrimination,

^{*}Kleen-Rite Janitorial Servs. v. Laird, Civil No. 71-1988-W (D. Mass., Sept. 21, 1971).

Space Services, Inc. v. Laird, Civil No. 15170 (D. Conn. August 18, 1972).

Fortec Construction v. Kleppe, 41 U.S.L.W. 2195 (D. D. C., October 1, 1972).

Pacific Coast Utility Serv., Inc. v. Laird, Civil No. C-71-1035 LHB, (N.D. Cal., 1971).

Ray Baillie Trash Hauling, Inc. et. al. v. Thomas S. Kleppe, Administrator, Small Business Administration, et. al., U.S. Court of Appeals, 5th Cir., Civil No. 72-1163, (5th Cir., April 18, 1973).

unauthorized use of 8(a) procedures, use during periods of non-emergency, illegal use of negotiation procedures, and allegations of favoritism on the part of the SBA. The case of Ray Baillie Trash Hauling, Inc. v. Kleppe (477 F.2d 696 (1973)) was the most comprehensive, as it considered all of the most important legal questions raised about the program to date. In its ruling of April 18, 1973, the Fifth Circuit Court of Appeals overturned a District Court ruling and found that the SBA's implementation of the 8(a) program was authorized by the Small Business Act of 1958. [Ref. 17, p. 697] Review of the Court of Appeal's decision was denied by the U. S. Supreme Court on February 19, 1974. In its ruling, the Appeals Court provided the following opinions regarding the aforementioned challenges:

Challenge: That the section 8(a) program as administered by the SBA was being restricted to minority firms and was therefore unauthorized because such use is not specifically mentioned in the statute.

Ruling:

This argument is without merit. The complex and volatile nature of problems, including allocation of government procurement contracts, often causes Congress to cast its statutory provisions in general terms, leaving to the agency the task of spelling out the specific regulations and programs . . . Congress has declared that the actual and potential capacity of small business concerns must be developed and that a fair proportion of total purchases and contracts of the federal government must be placed with such firms . . . The SBA has responded by adopting a program which reflects its judgement of priorities in light of current facts.

Challenge: That it is illegal for the SBA to direct the 8(a) program at only one segment of the small business community.

Ruling:

There is ample indication that small business concerns owned by disadvantaged persons have traditionally received a disproportionately small number of government procurement contracts. It is certainly reasonable, therefore, for the SBA to make a special effort to alleviate this imbalance . . . It is well settled that an agency need not 'strike at all evils at the same time' *Semler v. Dental Examiners*, 1935, 294 U. S. 608, 610, 55 S.Ct. 570, 571, 79 L.Ed. 1086, but 'reform may take one step at a time, addressing itself to the phase of the problem which seems most acute.'

Challenge: That the section 8(a) authority was intended only for use during periods of national emergency.

Ruling:

There can be no more reliable an indication of legislative intent than the specific statutory words selected by Congress in delineating the powers conferred. Section 8(a) unambiguously provides that the SBA is empowered to act 'whenever it determines that such action is necessary.' 15 U.S.C. § 637 (a). This broad mandate answers the argument that Congress intended to restrict section 8(a) to periods of emergency.

Challenge: That the authorization to negotiate in lieu of competitive bidding is in violation of other government statutes.

Two separate issues are involved in this challenge. The first being the authority of a government agency to remove a contract from the broad competitive field of formal advertising and award to the SBA thru negotiation; and the second being the right of the SBA to award the subcontract to one of its eligible subcontractors by negotiation in lieu of requiring competitive bidding among its limited field of eligible subcontractors.

Ruling:

Section 8(a) empowers the SBA to arrange for the performance of prime contracts by 'negotiating or otherwise letting subcontracts.' 15 U.S.C. § 637(a)(2). The statute does not require the SBA to engage in competitive bidding . . . statutes requiring competition in government procurement . . . recognize, however, that competition may be dispensed with when other statutes so provide, 41 U.S.C. § 252(c)(15), or when the purposes of the relevant program make it impractical to secure competition. 41 U.S.C. § 252(c)(10). Both exceptions are applicable here.

First, section 8(a) of the Small Business Act clearly constitutes specific statutory authority to dispense with competition. 15 U.S.C. § 637(a). It provides that the SBA may let subcontracts by negotiation or any other method.

Second, competition is impractical in the present case. The purpose of the Act is to assist small business concerns. The Act is based on the premise that such firms are unable to compete effectively in the marketplace and therefore cannot secure government procurement contracts awarded through competitive bidding. By increasing their participation in government procurement, however, these firms can eventually become self-sufficient, viable businesses capable of competing effectively in the marketplace. Private negotiation of subcontracts is the best means of accomplishing this goal. To require competitive bidding would be contrary to the basic rationale of the Act. Even if competition were limited to small business concerns, there would still be many small business concerns that would never receive government procurement contracts. This result would clearly frustrate the Congressional intent to assist small business.

Challenge: That the loss of formally bid contracts by a competitor to the SBA subcontractor as a result of the subcontractor gaining a competitive edge through his SBA 8(a) contract is an unconstitutional violation of due process.

The plaintiff argued that the subcontractor received a premium on his SBA 8(a) contract and that this premium was used to underwrite costs, thereby, enabling him to underbid

his competitors on other work offered through the formal advertising process. Thus, the government's action in awarding the contract to the SBA subcontractor deprived the plaintiff of his rights without due process of law.

Ruling:

. . . we cannot accept the plaintiff's argument that the section 8(a) program is unconstitutional because the plaintiffs may be disadvantaged competitively. There is no constitutional duty to offer government procurement contracts for competitive bidding. The SBA has the statutory authority to assist small business concerns through private placements of contracts. We have held that the SBA has not abused its discretion in adopting the 8(a) program. The program may produce some inequalities among small business concerns as a class. But in the area of socio-economic legislation, the government's action must be upheld if it is related to a proper government purpose.

Challenge: That the 8(a) program as currently executed is illegal in that it lacks objective criteria other than those of race, color, or ethnic origin for the identification of those persons who are deemed to be "socially or economically disadvantaged."

To date, the courts have not ruled on this issue as none of the challengers have been found to have standing to litigate. Although the challengers have attempted to present considerable data indicating the very small percentage of whites in the program in support of their charge of discrimination, the courts have ruled that to charge discrimination, the plaintiffs, themselves, must have applied for the 8(a) program and been rejected on the basis charged above. Since the challengers had either not applied, or had applied and been accepted, they had no grounds to charge that they had been discriminated against. As they had not incurred nor were

in danger of incurring some direct and personal injury resulting from a statutory or constitutional right designed to protect them, the plaintiffs had no standing to litigate.

[Ref. 17, p. 710]

III. PROGRAM DYNAMICS AND PROBLEMS IN APPLICATION

A. ORGANIZATIONAL REGULATIONS AND VIEWPOINTS

To make meaningful comments regarding problems either encountered during implementation or inherent to the program, it is necessary to have an adequate understanding of the directives and rules under which it operates and the philosophies and viewpoints of the participants. To accomplish this, the actual mechanics of the operating procedures employed by the Small Business Administration and the Department of Defense and its components in their execution of the program must be examined. The SBA and DOD each have their own regulations by which they must operate. In examining the mechanics of the program, the requirements of each set of regulations will be compared to note differences which might create obstacles inhibiting cooperation between the SBA and DOD. Where actual practice differs from the stated regulations, this will also be noted. Recommendations for changes to these procedures and other comments are presented.

1. Regulations

Procurement within the Department of Defense (DOD) is accomplished in accordance with the policies and procedures outlined in the Armed Services Procurement Regulations,

better known as the ASPR. These regulations may be supplemented by subordinate directives issued by departments and offices within DOD, but the ASPR remains the controlling directive and will be used in this comparison.

Procedures which the Small Business Administration follows in its implementation of the 8(a) program are found in Title 13 of the Code of Federal Regulations (CFR), Part 124. The 1975 edition of the CFR outlines the current procedures. Supplementing the CFR are Standard Operating Procedures (SOP) issued by the Small Business Administration. The SOP was used as the reference for SBA regulations together with the CFR.

2. Viewpoints

Implementation of these regulations is affected by the interests and philosophies of the various participants in the program. For the purpose of this thesis, the participants considered include not only DOD, the Navy, and the SBA, but also the minority subcontractor, and indirectly the Congress.

The contractor views the program in terms of the benefits, either long or short range, which he receives from it. For the contractor looking for long range benefits, the 8(a) program may well raise high expectations. Aware that the government is the largest single buyer of products and services, the contractor may look upon the program as a sure means to propel him into the economic mainstream of American life. To accomplish this, he will expect the SBA to provide adequate support in the form of contracts and management

assistance. Failure of the program to live up to these expectations can result in an embittered and disappointed contractor. The net effect of such a failure will result in a situation more unsatisfactory than that which would have occurred had there been no program at all. On the other hand, some contractors will view the program only from the short range and enter the program to make a quick profit and therefore will not expect nor necessarily desire SBA management assistance. While they will suffer disappointment only in the event that they fail to make a profit, their disappointment will be minimal compared to those who have invested considerable time and effort in an attempt to establish a viable business.

The philosophy of the SBA is to a large degree influenced by external political pressures to produce results. In the early stages of the 8(a) program, these results were most easily demonstrated by the dollar value of contracts awarded and the number of contractors in the program. This method of measuring program effectiveness produced a philosophy, particularly at the District level, of awarding a large total dollar value of contracts and bringing more contractors into the program. Recent attention to the small number of graduates^{*} since the initiation of the current program has resulted in a change to this philosophy. Results are now to be measured

^{*} Graduates are contractors who have completed the 8(a) program by developing to the point where the firm no longer requires 8(a) assistance.

by the number of graduates from the program. This change in the effectiveness measure will undoubtedly result in a shift of the SBA's philosophy towards more active concern for the quality and quantity of the assistance provided the individual contractor.

The SBA philosophy and policies are also influenced by the resources provided them to meet their objective. Although the theoretical philosophy of Congress regarding 8(a) has been well documented in the intent section of this thesis, the Congress's pragmatic philosophy is expressed by the amount of funds which they appropriate to support the 8(a) program. These funds, which are sufficient to provide only a specific SBA staffing and level of contractor support, implicitly limit the number of contractors who can be admitted to the program and be given adequate management assistance.

In considering the Navy's philosophy regarding 8(a) there are two levels within the Navy which must be considered. One level is at the top where the Assistant Secretary of the Navy for Installations and Logistics (ASN(I&L)) has the responsibility for establishing Navy policy and goals regarding the program. The second level is in the lower echelons where the procurement offices are involved with the operational aspects of the program.

The ASN(I&L) and the Assistant Secretary of Defense (I&L), who administer the program for their respective Secretaries, are grouped together for discussion purposes because of similarities in philosophies. Both Secretaries

(Defense & Navy) are more concerned with the support accorded the program than the end results achieved, i.e., producing viable minority firms. This is not to imply that they are unconcerned with the end results, but it is their philosophy that the Navy's duty is to provide contractual support for the program to the maximum extent possible, rather than judge the optimality of the program as a vehicle for producing established minority businesses. In the words of one official in the office of ASN(I&L),

. . . the Navy should give the 8(a) program a fair chance by providing the assistance requested. If the future reveals that the 8(a) program is not the most effective means for producing successful minority firms, it should be abolished and a new method tried. We cannot truly ascertain its success, however, unless we support the program to the best of our ability.

The philosophy of the Navy's procurement offices is to meet their objective of obtaining goods and services in the right quantity, at the right quality, for the right price, in a timely fashion to satisfy the Navy's logistical requirements. Although the procurement offices are assigned targets for 8(a) awards, their primary concern is to obtain the required product in a manner consistent with the aforementioned parameters. Procurement officers generally support the objectives of the 8(a) program, but are reluctant to have a requirement filled through an 8(a) contract if they believe they will have to pay a higher price or will receive a product of inferior quality as a result of contractor inexperience.

B. THE GOALS AND OBJECTIVES OF THE 8(a) PROGRAM

In reviewing the program procedures, both prescribed and de facto, the primary requirement for assessing the importance of any differences or problem areas as well as the correctness, completeness, and even the order of the steps within the procedure, is a knowledge of the goals and/or objectives of the program. As there are two primary support areas for the program, the SBA and the procuring agencies, in this case the U. S. Navy, a look at the goals and objectives of each is in order.

1. The SBA's Goals

The SBA's objective for the 8(a) program, as expressed in the Code of Federal Regulations, is to assist small business concerns owned and controlled by socially or economically disadvantaged persons to achieve a competitive position in the marketplace. The specific intermediate goals by which this objective will be obtained, however, are not so clearly stated. In the past, the specific intermediate goals have been primarily to encourage the growth of the program by a general increase in the support provided by the procuring agencies. These goals were expressed in the form of increases to the total dollar volume of contracts awarded for each year. A by-product of the concern toward increasing the total value of contracts awarded was to increase the number of contractors in the program.

The initial goals were set for the SBA by the Advisory Council for Minority Business Enterprise, established in 1971.

[Ref. 33] Subsequent goals were generated within the SBA based on consideration of the previous year's performance, the projected level of SBA staffing, and to a small degree the SBA's portfolio of contractors. The number of contractors to be in the program was generated on the basis of how many contractors it would take to perform the workload, expressed in the dollar volume of contracts. Recognition of higher concentrations of minorities in certain sections of the nation was given when the total goal was broken down and assigned to various SBA Regional and District offices.

A new concept of goals, in the form of program completions, i.e., minority firms which graduate as viable businesses, was introduced in FY 75. [Ref. 7, p. 72] The SBA has established a goal of 126 graduates by the end of that fiscal year under this new concept.

2. Navy Goals

The Navy's overall objective has been to support the program. Yearly goals for increases in the dollar amount of 8(a) awards by Navy commands were directed by the Assistant Secretary of the Navy (I&L). The goals were expressed in the form of percentage increases over the previous year's 8(a) output. Recent goals were a 25% increase for FY 73, 10% for FY 74, and a 20% for FY 75. [Refs. 26, 16 and 27] Establishment of these goals is not independent of the SBA's goals. The SBA's new objective for the forthcoming year is presented to the Interagency Task Force on Procurement for Minority Business, a task force appointed by the Interagency Council for Minority Business Enterprise. (The former

Advisory Council for Minority Business Enterprise.) This Task Force is made up of representatives from each of the procuring agencies and the SBA. The impact of the SBA's goals on the agencies and their ability to support these goals is discussed. Upon agreement with the SBA's goals, as has been the case to date, each agency indicates what the extent of its support will be. The Department of Defense has, in the past, relayed this goal to the individual services without specifying the support each will provide. For FY 75, however, each service was given a specific target in support of the DOD goal. [Ref. 25] The DOD instructions to the services concerning these goals have not directed attention to any specific areas of contracting. One exception to this occurred in 1972 when a memorandum by then Assistant Secretary of Defense (Installations and Logistics) Barry Shillito urged increased attention in the construction area. [Ref. 26] No specific guidance as to amount however, was given in this area.

3. The Need for New Goals

The present efforts of the Small Business Administration to develop new goals, using program completion as a measurement, is commendable and the authors support the effort, even though the details of the new goals are not yet known. The lack of any objectives, during the early years, expressed in terms of measuring end results of the program, while not desirable, is not necessarily damaging. The knowledge that it would be a few years before any contractors completed the program, gave the SBA a period of time in which to concentrate

their limited resources on the problems involved in developing the procedural details of the program. While the 8(a) authority itself was relatively well understood by all involved, the detailed portion of the program dealing with the criteria for admission, the extent of management assistance necessary, and the general overall learning curve connected with the program were yet to be established. Though it may be argued that the initial establishment of specific graduation goals would have provided incentive to hasten the development of the program, it can also be argued that this type of goal would have created undue pressure on the SBA to prematurely graduate contractors. This effect would have been to the detriment of the program during its early development. Conversely, the establishment of graduation goals for fiscal year 1975 was none too soon. The early entrants into the program have been in long enough that some method of measuring their progress was sorely needed. With the development of criteria for determining program completion, contractors' eligibility for graduation would seem to be a very sound indicator of their progress. Imposed late in the contractor's development phase, graduation pressures will also serve as an introduction to the pressures he will encounter once he has graduated and is on his own. The SBA has cautioned, however, that attainment of the goal of 126 graduates during this period of severe economic malaise should not be given high expectations. All businesses have suffered severe setbacks and the 8(a) contractors are even more susceptible. The authors concur with this assessment.

In addition to the development of graduation goals, it is recommended that the SBA implement a follow-up program to monitor the continued viability of contractors for a given period of time following graduation. Official concern for a sustained measure of success should counteract efforts to graduate contractors too soon. Expectations of long-term viability should be reconciled, however, with recognition of the high failure rate of small business as a whole.

Another concept SBA is considering, is halting the increase in the number of contractors in the program and concentrating on putting its resources to the best use in ensuring the optimal development of the contractors already in the program. This concept acknowledges the fact that the SBA has limited resources available to support the program and has had only moderate success in increasing these resources. The SBA originally proposed limiting the number of contractors in the program to 1500 and the total contract support to \$250 million per year. [Ref. 7, p. 17] This proposal was subsequently modified to reduce the number of contractors to 1260 as a result of reductions in the SBA staff to support the program. [Ref. 35, p. 4] To ensure that their efforts are put to the best use, the SBA's District offices have been directed to review their current contractors and retain only those that are showing progress. Concurrently, the Districts are developing agency support requirements for these contractors based on the contractor's individual projected needs. The SBA will then be able, for the first time,

to base its total dollar volume goal on the actual needs of the contractors. An argument may be advanced that the SBA, by pursuing such a policy, may be eliminating those contractors who need help the most. This argument is discussed in a later section of this thesis which addresses the effect of resource limitations.

Three recommendations regarding goals follow. A recent General Accounting Office study of the 8(a) program [Ref. 7, p. 10] found that the contractors have been chronically undersupported with respect to the needs projected in their business plans. The \$250 million in support for 1260 contractors proposed by the SBA will result in less support and more contractors than in FY 74 when the GAO found \$272 million to be inadequate support for 1132 contractors.

The first recommendation, therefore, is that the SBA disregard its goal of \$250 million in contract awards and instead use the actual needs of the contractors to be in the program as a goal. In this case, the needs of the contractor are measured by the projected dollar amount of 8(a) contracts he will require to attain self-sufficiency. These needs are included in his business plan which will be discussed later in the thesis. If this figure is too high for acceptance by the Interagency Task Force on Procurement for Minority Business, the number of contractors should be further reduced to correlate with the reduced amount of contractual support agreed to by the Task Force. There should be no more contractors in the program than the number whose needs can be fully met. It seems illogical to fail to

provide a contractor the support he needs and at the same time expect him to succeed.

The second recommendation is a corollary of the first and requires that the limit on the number of contractors in the program not be set at 1500 or 1260 but rather determined by the contract support which the agencies provide the SBA and the management assistance which the SBA can provide the contractors.

The third recommendation relates to the earlier recommendation that the SBA implement a follow-up program to monitor the continued viability of contractors for a given period of time following graduation. In developing this monitoring program, definitive, measurable criteria must be established to determine what is meant by viability. The authors recommend that the SBA develop such criteria, but fully realize that their development is a task of no small proportion. Nevertheless, if the effectiveness of the program is to be accurately measured, the generation of criteria must be undertaken. Even though an outside observer may not agree with the resultant criteria, he will at least know upon what measure the success of the program is based.

C. ELIGIBILITY FOR ENTRY INTO THE PROGRAM

The program as outlined in the regulations may be considered as a cycle in which the needs of the §(a) contractor are determined, procurement requirements supporting these needs are identified and provided to meet these needs, and the process repeated until such time as the contractor is adjudged ready to graduate from the program and

compete on his own in the private sector. This cycle places the burden of initiating the program on the Small Business Administration. Both the Code of Federal Regulations (CFR) and the Armed Forces Procurement Regulations (ASPR) clearly indicate that only the SBA has authority to bring a contractor into the program, although the Department of Defense and other government agencies may refer interested parties to the SBA. The ASPR, however, contains no provision concerning the entry of contractors into the program, other than a requirement that they be certified competent by the SBA prior to receiving a contract. All directives concerning eligibility and the entry process are contained in the CFR and the SBA's SOP 60 41 1.

The only eligibility requirements stipulated in the CFR for entry into the 8(a) program are that the small business concern must be owned and controlled by one or more socially or economically disadvantaged persons. Viewing this as two basic criteria, ownership and control on one hand and social or economic disadvantage on the other, the latter will be considered first.

1. Socially or Economically Disadvantaged

The CFR (§ 124.8-1) amplifies its definition of "disadvantaged" by stating that:

Such disadvantage may arise from cultural, social, chronic economic circumstances or background, or other similar cause. Such persons include, but are not limited to, black Americans, American Indians, Spanish Americans, oriental Americans, Eskimos, and Aleuts. Vietnam-era service in the Armed Forces may be a contributing factor in establishing social or economic disadvantage.

[Ref. 41, p. 176]

The use by the SBA of the words socially or economically disadvantaged as opposed to socially and economically disadvantaged greatly expands the field of eligible firms. By allowing a firm to be socially or economically disadvantaged, the SBA grants program access to firms operated by relatively affluent but socially disadvantaged persons. There is considerable controversy as to the wisdom of this policy, and the SBA was recently criticized by the General Accounting Office for admitting firms with minority owners of relatively high net worth into the program. [Ref. 7, p. 29] The SBA maintains, however, that its policy is justified. The philosophy underlying its argument was expressed by the SBA Administrator, Mr. Thomas S. Kleppe in March 1974 in the SBA's Report to the Subcommittee on Small Business of the Committee on Banking and Currency.

. . . Another question is what degree of economic disadvantage is necessary to determine an individual's eligibility to participate in the program? If a person has been able to earn a salary above the national average, should this disqualify him? If not, at what level of economic affluence do we stop? However, if the program objectives envision the lessening of the national imbalance of business ownership between the disadvantaged (basically minority group) and those in the non-disadvantaged class it will progress more efficiently by including as owners those of the disadvantaged group who have proven capabilities and greater potential for success in business management. To date, SBA has taken this approach even though vulnerable to the anomaly of assisting the affluent disadvantaged. Once again, this course is subjective, arbitrary and varied. Yet any language the Agency can find to be more precise inevitably results in discriminating against a segment of the very group it is bound to assist.

In response to numerous criticisms about its lack of more concrete eligibility criteria for the socially or

economically disadvantaged, the SBA elaborated on the definition provided in the CFR in an attempt to provide the desired criteria. In its SOP 60 41 1, the SBA indicated that where the eligibility criteria in the CFR was inadequate to determine acceptance, consideration may also be given to:

1. Inability to obtain technical assistance, business assistance, or financing.
2. Impediments and obstacles encountered in entering into the economic mainstream resulting from discrimination or other circumstance.
3. Inability to compete effectively in the marketplace because of restrictive practices on the part of financing or commercial agents.
4. Frequency of unemployment or marginal employment due to residence in depressed areas or past practices of discrimination based on background or other circumstances.
5. History of applicant income status.

[Ref. 36, p. 23]

In addition to the above criteria, it should also be noted that firms owned by handicapped individuals are also eligible. Even with this additional information, however, there remains a considerable amount of subjectivity in the selection of firms deemed eligible for the 8(a) program. The need to exercise this subjectivity is increased by the limitations on funds and personnel for the SBA because these limitations will restrict the number of contractors who can be in the program. This, in turn, requires the SBA to reject more applicants.

Although all of the SBA criteria for program entry make no mention of any specific requirement that the owners be minorities, application of the criteria by the SBA appears

to have essentially eliminated non-minorities. Table 2, on the next page, indicates that from the inception of the program through FY 74, the vast majority of contractors who successfully met the above criteria and subsequently were awarded contracts, were in fact, minorities.

2. Ownership and Control

With regard to the first part of its basic eligibility criteria, that of ownership and control, the CFR notes that the ownership may take one of several forms. [Ref. 44, p. 175] These include proprietorships, partnerships, and corporations. The SBA has clearly defined its meaning of ownership in each of these instances by requiring that disadvantaged persons maintain at least a 50% interest in the case of partnership, or in the case of a corporation, at least 51% of each class of voting stock. The SBA's meaning of control, however, is not so clearly defined. The SOP implies that control exists when the owners actively participate in the management and operation of the firm. Unlike the definition provided for ownership, however, this definition confers no measurable meaning. To determine control, its meaning must be specified in measurable terms. For example, does control confer the power to set salaries, hire personnel, authorize expenditures, etc? Without some definition of its meaning of control, the SBA appears to have no measurement by which to determine whether it exists. It is recommended that if the SBA is to require control by disadvantaged persons, it should provide more definitive guidelines as to the meaning of control.

8(a) CONTRACT AWARD DISTRIBUTION BY MINORITY CODE
(\$ in thousands)

Fiscal Year	No.	\$ Value	BLACK		SPANISH AMERICAN PUERTO RICAN		AMERICAN INDIAN		* ALL OTHERS		** TOTALS	
			No.	\$ Value	No.	\$ Value	No.	\$ Value	No.	\$ Value	No.	\$ Value
1968	8	10,494	0	0	0	0	0	0	8	10,494		
1969	21	4,968	4	1,862	2	957	2	1,097	29	8,884		
1970	178	18,329	11	2,137	2	1,144	8	909	199	22,520		
1971	667	52,593	81	7,324	25	2,596	39	2,618	812	65,132		
1972	1302	116,062	265	19,748	82	11,327	53	4,460	1706	151,598		
1973	1133	156,421	320	28,324	111	18,741	112	9,477	1976	212,963		
1974	1585	186,618	371	34,815	136	36,535	154	14,166	2246	272,135		

Source: Small Business Administration, September 10, 1974.

*Includes Asians, Eskimos, and Aleuts. Also those unidentified by minority group code, and including Whites.

**Variation between these figures and those shown in Table 1 are the result of contract modifications as the tables represent the accumulation of data on different dates.

TABLE 2

By requiring both ownership and control, it appears that SBA is attempting to prevent entry by firms which are owned by disadvantaged persons, but are staffed and controlled by non-disadvantaged persons who accrue the majority of the benefits derived from the operation of the firm. While this requirement may prevent the entry of such "front" organizations, it also prevents the minority firm from obtaining needed capital from non-disadvantaged persons.

3. Effects of Resource Limitations

a. Sponsorship

A fourth type of ownership arrangement which the SBA allows, that of the sponsor relationship was instituted because of the SBA's limited resources and provides considerable insight into the complexities of the ownership and control, versus ownership or control question. Under this arrangement, the SBA allows profit-oriented business sponsors to assist 8(a) firms in managing their business operations and to provide them with capital and training. With this arrangement, the SBA can reduce the resources which it must commit. In return for their assistance, sponsors obtain limited stock ownership in 8(a) firms and/or receive fees from the firms. The impact of this type of business firm on the 8(a) program is indicated by the fact that sponsored firms constitute only 3% of the total number of firms in the program since its inception, but performed 18% of the total dollar volume of contract awards. [Ref. 7, p. 18] In addition to providing insight to the ownership-control question, the sponsorship program is also of interest as it was the most

frequently criticized aspect of the 8(a) program by all the Navy procurement personnel interviewed during research for this thesis. The majority of the complaints centered around charges that the sponsorship program was merely a "front," whereby established non-minority contractors could make excessive profits by performing a contract negotiated to help an inexperienced minority firm.

The recent report to Congress by GAO indicates the program originated when the SBA began obtaining large service-type contracts from procuring agencies for award through the 8(a) program. [Ref. 7, p. 18] From the SBA's view point, the large contracts were desirable as they enabled the SBA to more easily meet its total dollar volume goals. The administration of a few large contracts required less of SBA's manpower and other resources for monitoring, training, and management assistance, than would be required for many small contracts with the same total dollar volume. Award of these contracts, however, produced two significant problems for the SBA. The first was that the small disadvantaged firms usually lacked both capital and proper management talent to successfully perform large contracts. The second problem was that independent contractors who had previously received the contracts competitively, realized they were losing contract opportunities and, as a result, became highly critical of the 8(a) program. Efforts by the individual contractors to halt these encroachments through the SBA, the courts, and the Congress were to no avail. During their discussions with the SBA,

the contractors became aware of the profit potential in becoming sponsors and decided to join rather than fight the SBA. Support for the belief that profit was the primary incentive, was provided by the GAO's report that in interviews with seven (7) sponsor firms, six (6) stated that they became sponsors to make a profit and protect their livelihood. [Ref. 7, p. 19]

For the SBA, the appeal of the sponsorship program was its ability to alleviate the 8(a) contractor's demands on the SBA's limited resources by substituting the sponsor as the focus of those demands. Thus, the sponsorship program can be traced to Congressional staffing and funding limitations.

In addition to approving the sponsor program, the SBA also promulgated further directives, which if properly implemented would alleviate the validity of concern for their livelihood as a reason for the independent firms to become sponsors. These criteria noted that contracts would not be accepted if there existed a significant possibility that a small business concern would suffer a major hardship if the procurement was removed from competition. In determining this possibility the firm should have received at least one award of a similar contract during the past year and be dependent upon such recurring awards for a significant portion of its overall sales. [Ref. 36, p. 16] A second criteria required that the SBA not accept contracts where in its judgment, the percentage of procurements considered for 8(a)

contracting is excessive in relation to the total purchases of like or similar requirements of the government. [Ref. 36, p. 16]

These same restrictions may also act to the detriment of the 8(a) program by limiting the number of contracts available to minority contractors. The need for proper interpretation and application of these clauses is thus crucial to the success of the program as failure to apply them judiciously, could result in either of two extremes. On the one hand, excessive concern for independent contractors would greatly reduce the amount of contracts that would normally be available for 8(a) consideration, while on the other hand, excessive concern for the 8(a) firm would provide no protection to independent contractors greatly dependent on government contracts. Although the restrictions do appear contrary to the SBA's goal of aiding minority contractors, they are consistent with the basic intent of Congress in passing the Small Business Act, which was to aid all small businesses. The SBA's efforts to aid one segment of the small business community should not be to the detriment of the remaining firms.

In evaluating the operation of the sponsor program and the relationship between the sponsor and the disadvantaged firm, the GAO reported several significant findings. The majority of the sponsors indicated that while they desired to develop the 8(a) firms into viable businesses, they did not want them to become competitors but would prefer to keep them dependent on the sponsors. [Ref. 7, p. 19] This desire

to retain control affected the operational relationships which the sponsors had established with the 8(a) firms. The failure of the SBA to clearly define the criteria by which the disadvantaged person's control of the firm would be measured, resulted in a wide variety of operational relationships between the sponsor and the firm. Although the firms and their sponsors must submit a management agreement outlining the proposed relationship, the lack of specific requirements for detailed descriptions of services to be provided, and the delineation of authority and responsibilities has largely negated the value of the agreement. The GAO's findings included numerous instances where the sponsor maintained all the financial records of the 8(a) firm; instances where the sponsor prepared, wrote, and signed all the payroll checks for the minority firm, and arrangements whereby sponsors were authorized to make expenditures of minority firm funds without obtaining co-signatures of the 8(a) firm officers. [Ref. 7, p. 20-21] The minority firm owners were frequently limited to general supervision, maintenance of employee time sheets, and informing the sponsor of financial problems. [Ref. 7, p. 22] Even in the relatively simple area of establishing criteria for fees which the sponsors are permitted to charge the 8(a) firms, the GAO noted that the SBA provides no guidelines. Fees ranged from 6% to 16.6% of the gross revenues of the 8(a) firm. [Ref. 7, p. 23]

Although the GAO's findings may be indicative of a need for tighter controls by the SBA over the sponsorship

program, there is another interpretation of the findings. The basic concept of the free enterprise system is competition. Every business strives to outdo its competitors. This concept is supported by the GAO's report that the majority of the sponsors contacted indicated no desire to create competitors. It thus appears contrary to the basic tenets of free enterprise to genuinely expect a sponsor to encourage an 8(a) contractor to become a self-sufficient, growing firm. While the sponsor may well enter the program to gain a profit from the fees he will receive from the 8(a) firm, it appears illogical to expect that he will actively strive for the development of a contractor who could one day put him out of business. Consciously or subconsciously, the sponsor will obstruct the minority firm's progress. Evidence of this is clearly provided in the GAO report.

The authors therefore recommend that the sponsor program be discontinued. If this recommendation is not accepted, however, and the sponsor program is to continue, the authors concur strongly with the GAO recommendation that the SBA clearly monitor the sponsor program. They also recommend that the SBA establish more stringent guidelines regarding the content of the management agreement to ensure that the minority firm receives the proper training and guidance necessary to enable it to become independent, and to ensure that disadvantaged persons retain true control of the firm. Such agreements could be constructed such that the sponsor receives a fee contingent upon the 8(a) firm becoming self-sufficient

thereby providing the sponsor an incentive to aid in the growth and establishment of the minority contractor.

The authors further suggest that if the SBA implements the degree of control required to provide assurance of some degree of success for the sponsor program, the cost of these controls in additional manhours and money, may well offset any savings accrued by having sponsors provide management assistance to contractors vice the SBA.

b. Impact on Contractors

As discussed earlier in this paper, the SBA planned to limit the number of firms in the 8(a) program and concentrate its limited resources on these firms. In the process of limiting the number of contractors who participate in the 8(a) program, thereby requiring a reduction of contractors presently involved, the SBA may be eliminating those contractors who need help the most. Provided with limited funds, the SBA has chosen a policy of attempting to help the maximum number of contractors by concentrating on those with the best chance of success. While it may be argued that they could have chosen to take only a few who need a large amount of assistance, the choice of which approach will most aid minorities is subject to the opinion of the chooser.

The authors therefore recommend that the SBA, in determining which contractors should be terminated from the program, first examine all the other contractors in the program to determine if some might better be served by other SBA programs. Some of those 8(a) contractors who have developed

to the point where they no longer need all the support offered by the 8(a) program, may be able to have their needs met by other SBA programs. By transferring these firms out of the 8(a) program, more of the less experienced contractors can be retained in the program.

By limiting the number of contractors who can be in the program, the SBA also assumes the unenviable position of deciding which contractors must be terminated or graduated and which contractors will be admitted to the program. Standards for admission, termination, and graduation are discussed in later sections of this thesis, but regardless of what criteria are used, there will no doubt be some minority firms who will feel they were not given a fair chance to participate in the 8(a) program. These feelings will probably result in letters to Congressmen and other persons of high authority. The alternative to limiting the number of contractors in the 8(a) program is to allow program entry of all socially or economically disadvantaged firms who apply for 8(a) assistance and allocate existing resources among them. Even with this alternative approach, the decision as to who will be helped must still be made unless there are adequate SBA resources and agency support requirements to support all the contractors in the program. When the needs of the contractors in the program exceed SBA resources and supporting procurement requirements, a decision must be made as to which contractors will be assisted. The authors believe it unlikely that Congress will grant the

SBA the required level of resources to support all potential 8(a) contractors, and equally unlikely that agency procurement requirements would continue to be compatible with contractor needs as these needs grow. Thus, the problem of determining which contractors should be assisted is simply delayed until after the contractor is in the program. Unlimited entry would only increase the number of contractors about whom this decision must be made. The authors believe that delaying the decision to withhold assistance from a contractor until after he is in the program will result in greater animosity on the part of the contractor since he will probably have more time, money, and effort involved than when he is seeking initial entry. The authors, therefore, concur with the SBA policy of limiting the number of contractors in the program.

To determine who will be granted program entry, the authors recommend that all firms applying for assistance under the 8(a) program first be screened by the SBA to determine if they may be better served by other SBA or government programs. If it is determined that the firm may be best assisted by the 8(a) program, it should then be determined if the firm is owned and controlled by socially or economically disadvantaged persons. After verifying that the firm is qualified for 8(a) assistance, a decision would then be made by the SBA, based on definitive criteria, as to whether the firm required SBA management assistance and/or a business education orientation before receiving a contract. Those requiring assistance or education would be scheduled for

whatever training is appropriate. Once again, the SBA would be free to utilize other SBA or government programs to provide or aid in this training. The personnel of SBA would, however, still act as the focus and overall coordinator of assistance for the firm. If the scheduling was for more than, say 60 days in the future, the company would have to reconfirm periodically with the SBA that it still desired assistance, or else be eliminated from the schedule. This system of reconfirmation would serve to eliminate those firms, who in the future, decided not to participate in the program.

Firms not needing this training, and those that complete the training outlined in the previous paragraph, would go on a waiting list of firms that are ready to participate in an actual contract. As openings in the program become available in the firm's area of expertise, the firm would be admitted to the 8(a) program.

D. THE BUSINESS PLAN

Although an applicant's eligibility for the 8(a) program is determined by the criteria discussed previously, his acceptance into the program depends on the submission and approval of a business plan.

1. SBA Policy

Where an applicant is found to be qualified in all other aspects, if the SBA official believes the likelihood of being able to provide sufficient contract support is minimal, he should so inform the applicant and discourage him from submitting a plan. This policy protects both the SBA

and the contractor. The SBA avoids investing resources in contractors who will never be in the program. Simultaneously, the risk of an unnecessary expense to the contractor is reduced as the SBA is not authorized to reimburse an applicant for the expense involved in the preparation of a business plan. The contractor is instead expected to amortize the cost during the time he is in the program.

Assuming the likelihood of contract support, the applicant is authorized to submit a business plan. The plan is an extensive report which not only documents his eligibility for the program in terms of his status as a disadvantaged person and his ownership and control of the firm, but also outlines how the 8(a) subcontract assistance which he is requesting will enable the firm to improve and expand its capabilities in order to become self-sustained and profit-oriented.

The preparation of this plan is not an easy task, but the contractor is not required to prepare it alone. The SBA offers training courses at their district offices on business plan preparation and has considerable resources available in terms of counseling and tutoring in all areas of small business management.

2. Business Plan Content

The business plan provides information in eight general areas about the applicant firm. [Ref. 36, p. 26-37] The first area is a description of the proposed business including the type, purpose, and goals of the firm. The

second section of the plan provides background on the firm, outlining the chronological development of the firm and identifying and discussing significant problems and successes during this period.

The next area discussed in the plan is that of the ownership and control of the firm. All legal documents connected with the founding of the firm are included, together with an indication of the degree of ownership by each stockholder or officer. Of particular importance is the inclusion of a listing by name of all officers and stockholders. The SBA regulations require documentation of the disadvantaged status of these persons. The writers were encouraged to find during their visits to SBA District and Regional offices, that some offices have addressed this point in their business plans by including a requirement for this information in the format. In its report, however, the GAO indicated that this was not the case throughout the SBA. Nonetheless, the efforts by some field offices to document the evidence of disadvantage is commendable since the authors also believed that some effort must be made in this area to ensure that the assistance provided in the 8(a) program is given to those for whom it was intended.

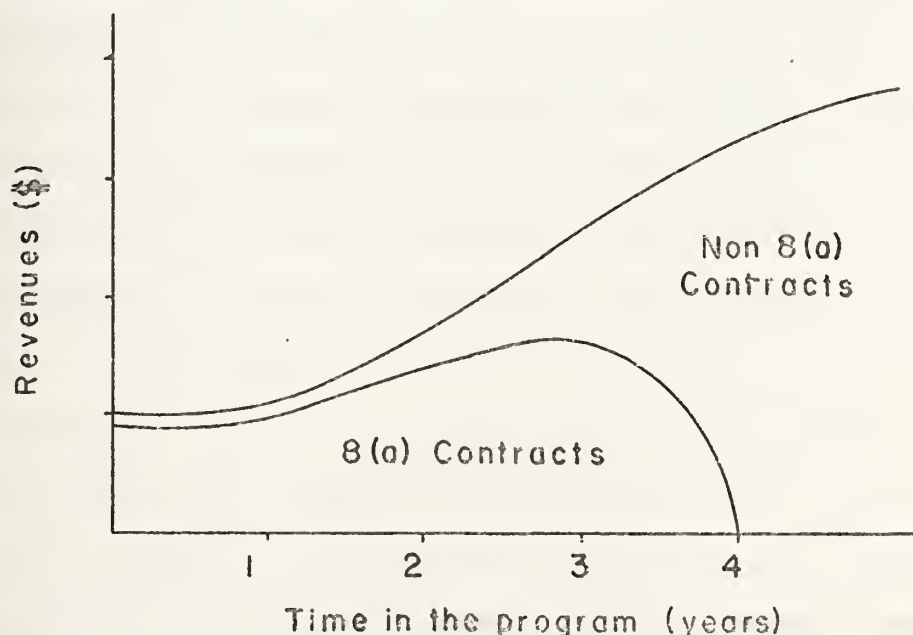
The fourth section of the business plan contains information about the product or service which the company proposes to market, while the fifth section presents information on management. Included in this information should be an organizational chart, plus a description of all agreements or

contracts for outside management and business consultants. These management contracts must be approved by the Associate Administrator for Procurement and Assistance.

The sixth section contains the heart of the business plan as far as the procuring agencies are concerned. Covering marketing, this section provides data on the anticipated growth rate of the firm. This anticipated growth rate determines the amount of support which the firm will require from the SBA in the form of 8(a) subcontracts. The growth is depicted in a graphic format as indicated in Figure 3.

Figure 3

8(a) Contract Support Requirements for a
Typical 8(a) Contractor Business Plan



Source: Interview with Mr. Richard Beans, Small Business Administration, Washington, D. C., 24 Feb. 1975.

As can be seen in the graph, the plan requires that initially the contractor receive a high proportion of his revenues from the 8(a) contracts. As the firm grows, the percentage of non 8(a) work increases until 8(a) support is no longer required. Figure 2 is a hypothetical example and varies depending on the firm, the industry, and other circumstances. For example, one firm may graduate in three years while another may require five years of support. This recognition of the variation in time requirements between industries and firms is a recent change in SBA policy. Prior to the change, the policy was to limit the contractor's participation to three years. The level of support also varies widely from firm to firm, both in dollar value and percent of revenues. This portion of the business plan is extremely crucial to the success of the firm. An overestimate of total initial contracts, if attained, may exceed the firm's capacity and result in poor performance. On the other hand, an underestimate of total initial contracts may result in the firm being unable to recover its fixed costs, thereby incurring a loss. A loss may also be incurred if the contractor overestimates his ability to obtain non 8(a) contracts. This will require additional support by the SBA if the contractor is to remain viable. An excessive growth rate can also create problems as it can result in the firm's working capital and management capabilities being exceeded. While none of these events will necessarily result in the firm being dropped from the program, they will require a reassessment and re-evaluation of the plan. Although readjustments of the plan may be

authorized if needed, they can be discouraging to the contractor. A careful analysis of the plan by the SBA is therefore required before approval, to ensure that this estimate of growth for attaining a position in the competitive market is realistic.

The seventh section of the plan describes the facilities and equipment which the firm either has or will need. If any of the property is leased or rented, a copy of the lease or rental agreement should be included.

The last section of the report covers the financial aspects of the firm. A balance sheet and a profit and loss statement for the current and last 3 years (if applicable) must be prepared. A detailed indication of the firm's financial needs for additional equipment, working capital, etc. must be provided. Cash flow projections for each of the years the contractor is in the program, must be produced along with an explanation of how the firm proposes to finance performance of its 8(a) contracts. For the average minority firm, this is perhaps the most difficult section of the business plan to prepare, but it is also the most important, as a complete understanding of this facet of its operation is crucial to the success of any business.

As noted earlier, there can be a significant expense involved in the preparation of a business plan. [Ref. 5, p. 422] This expense is in terms both of time and money. Although the SBA provides some assistance, the prime responsibility for the preparation of the plan lies with the

contractor. Preparation of the business plan is partly a learning experience and having preparation responsibility vested with the contractor, insures that he will derive the maximum educational benefit therefrom.

3. Risks of Preparation

The contractor's efforts and the completion of his plan determine, to a large part, the cost of the plan. This cost is not without risk, as acceptance into the program is not dependent upon the submission of the plan, but rather on the availability of contracts to support the plan. Before approving the plan, the SBA official must determine that there is a reasonable likelihood that appropriate support will be available. [Ref. 36, p. 15] The business plan is reviewed at the district level and if recommended for approval, is then forwarded to the Regional Office for approval by the Regional Director. [Ref. 36, p. 33-37] Even after approval and acceptance into the program, some risk to the contractor remains. The SBA clearly states in its letter of approval to the contractor that its acceptance and approval of the firm's business plan is not to be considered a commitment on the part of the SBA to award a contract or provide any form of assistance. [Ref. 36, p. 36]

In the past this has been more than a hypothetical risk. The GAO findings, based on a three state survey, revealed that in FY 73, firms in the program received on the average, little more than half of their projected 8(a) contract support requirements. [Ref. 7, p. 10] The SBA has indicated

that the primary reason for this failure to provide adequate support is its lack of control over the other federal agencies in ensuring that these agencies provide the support needed. [Ref. 7, p. 16] Albeit, it is noted that for the last three fiscal years, the agencies have met the support goals established by the SBA. Implementation of the SBA's proposed change to limit the number of contractors in the program and implementation of the authors' suggestion to base the award goals on the actual needs of the contractors, should greatly reduce the contractors' risk of receiving inadequate support.

Although there is some financial risk associated with the preparation of the business plan, the benefits derived may well be worth the risks involved whether the contractor obtains an 8(a) contract or not. Sound planning by any business greatly enhances its chances of success. The typical small businessman, especially one establishing a new concern, is generally weak in the financial and marketing areas. The knowledge gained in preparation of his business plan should serve as an educational base in these two areas for any future venture which he may enter.

E. SELECTION OF CONTRACTS

1. Procedures: Theoretical versus Actual

In theory, following approval of a contractor's business plan, the SBA attempts to fulfill the contractor's needs by requesting commitments for procurement contracts from the various government agencies. For the Department of Defense, the ASPR clearly states that the SBA shall present its procurement

support requirements, based on the needs of the contractors in the program, to the appropriate Department (Navy, Air Force, DSA, Army). This requirement may be for the support of one contractor or a larger requirement for the support of several contractors. Accompanying the request, in accordance with the ASPR, will be the identification of the SBA's subcontractor(s) and the capabilities and qualifications of the subcontractor(s) to accomplish various categories of maintenance, repair, new construction, etc. The SBA's regulations are silent on this point, although the CFR implies agreement with this sequence. This information is provided to the Department's Economic Utilization Advisor, a position presently held by the Honorable Morris Questal (OASN) for the Department of the Navy. The Department then selects from its future procurement requirements, appropriate contracts to meet this need and offers them to the SBA.

In actual practice, in the area of Naval shore facilities construction and maintenance, the communication of the SBA's specific needs to the Navy as described above, does not occur. Individual contractor requirements are rarely presented to the Navy's Economic Utilization Advisor or any other office below him. Although the GAO reported that SBA personnel work with each agency by reviewing the agency's planned procurements to identify and designate suitable contracts, there has

been very limited contact with the procurement offices* which contract for the construction and maintenance of the Navy's shore facilities. As a result, the goals and objectives of these offices are not based on the actual needs of the local SBA District office. Instead, goals are imposed on them by higher authority. These goals have their origin in the agreement reached between DOD and the SBA at the Inter-agency Task Force level. This lack of knowledge of local SBA needs causes the various procurement offices to select contracts based on in-house goals, which may be completely unrelated to the SBA's requirements. The SBA must then determine from the contracts offered whether it has or can get a contractor capable of performing the work.

2. NAVFAC Responsibility versus Authority

The lack of knowledge as to what the SBA actually needs is not the only factor which creates difficulty in providing the right contract at the right time. In directing the Navy to support the program, the Secretary of the Navy has indirectly given the Naval Facilities Engineering Command (NAVFAC) the responsibility for providing the required support in the area of construction and maintenance service contracts because of NAVFAC's mission in this area. This responsibility is not accompanied by an equal degree of authority, however,

* Specifically, the Naval Facilities Engineering Command (NAVFAC) and its five CONUS Engineering Field Divisions: Southern Division, NFEC, Atlantic Division, NFEC, Chesapeake Division, NFEC, Northern Division, NFEC, and Western Division, NFEC.

as NAVFAC's control over expenditures is limited by funding classifications. Direct control over contract funding by NAVFAC is confined to Military Construction (MCON) Appropriation funds. Nearly all of the Navy's new construction is provided in this appropriation. While this accounts for a significant dollar amount, most of the funds for the past four years have been expended on large contracts above \$500,000, few of which are small business set asides.* A small amount of construction and nearly all alterations, repair, and maintenance service contracts are funded by the Operations and Maintenance, Navy (O&MN) Appropriation, which is controlled by other Navy commands and activities.** For the past four fiscal years, in the range most suitable for award to 8(a) firms, i.e., contracts less than \$500,000, two-thirds of the contract awards and one-half of the dollar volume have been funded by O&MN appropriations (See Appendix E). Control over these expenditures by NAVFAC is limited to certifying the work as to need and technical adequacy. This certification is performed by the Engineering Field Divisions. While the activities may be encouraged by the EFD to channel a portion of their contract awards to 8(a) firms, directives to this effect must come from the activities' headquarters

*Based on data obtained from Contract Summary Reports (NAVDOLK 1893) prepared by EFD's.

**NAVFAC does exercise control over a very small percentage of these funds for its own facilities.

command. Once the activity authorizes the channeling of one of its O&MN funded projects into the 8(a) program, NAVFAC must make the award to the SBA as only NAVFAC and its delegated representatives have the authority to award contracts in the construction and maintenance service area. In the reporting of 8(a) awards to the Secretary of the Navy for the preparation of statistics about the program, NAVFAC is credited with all awards in this area because of their authority, even though as noted above, they control only one-third of these contracts.

3. Factors Affecting Selection

The decision authorizing the use of an O&MN funded project in the 8(a) program is based on essentially the same factors as those used by NAVFAC in considering an MCON project for the program, but these factors affect the decision differently for each type of funding. The factors are of three general classes and may be considered as cost limitations, time limitations and the complexity of the project. Although each of the factors will be addressed separately, it is important to note that they all have their foundation in the purchasing office's concern over contracting with an inexperienced contractor. This is a liability which the 8(a) contractor frequently has difficulty in overcoming.

As previously mentioned in the paper, the 8(a) contractor is restricted in subcontracting with non-disadvantaged firms, and because of this he may be unable to obtain the needed management expertise from experienced contractors. The 8(a) contractor may also look to the SBA to provide

management counseling but this is seldom an adequate substitute for knowledgeable management personnel within the firm itself.

Conversely, the agencies are not always correct in their assumption that the 8(a) contractor is inexperienced, as there are some experienced and established contractors in the 8(a) program. The SBA has, in the past, had a policy of admitting a limited number of established minority firms in order that these firms may grow into new and larger areas of competition. The SBA's philosophy is that these firms have been unable to make this growth transition because of their social or economic disadvantage, and the 8(a) program provides the opportunity for this growth. Although the SBA needs the larger MCON projects for construction firms in this category, there apparently has been little publicizing of their existence, as few NAVFAC procurement personnel are aware of their presence. Despite the SBA's philosophy, continuance of these contractors in the program has been questioned by the GAO. Whether they remain in the program or not, the limited extent of their participation almost eliminates their influence in considering the effects of cost limitations, time limitations, and project complexity on contract selection.

The consideration of cost limitations finds its basis in the characteristics of the Congressional appropriations which provide the funds for MCON projects and O&MN projects. Within the MCON appropriation MCON projects are funded individually. The funds cannot be used for any purpose

other than the individual project and the use of funds remaining after award for any other purpose is very restricted. This restriction provides little incentive to award contracts at the lowest cost. The O&MN appropriation conversely is a general appropriation. Funding is not directed at any specific project and savings on any project funded from this appropriation may be applied toward any number of other uses. Although O&MN appropriations have increased over the last few years, when the appropriations are adjusted to reflect inflation, the funding level in constant dollars has decreased. [Ref. 6, p. 29] Aware of this fact and the fact that 8(a) awards provide little assurance of contract costs lower than those obtained through competitive bidding, commands seeking the performance of O&MN funded projects may be understandably wary of the 8(a) program.

Another factor when considering a project is that of the time involved in an 8(a) award. The type of appropriation determines the time frame within which the funds must be obligated, i.e., a contract awarded. MCON appropriations provide a two year obligation period, so the MCON project has a relatively long period of time in which to complete design work and award a contract. In contrast to this, projects funded with O&MN appropriations must be awarded within the fiscal year appropriated. As all design work must normally be accomplished within that year, this frequently results in a relatively short time frame for advertising and awarding the contract competitively. When the contract is ready to

be advertised, if it is instead offered to the SBA for the 8(a) program and the SBA is unable to obtain an acceptable contractor or negotiate an acceptable price, the activity may not subsequently have sufficient time to advertise and award the contract competitively. This is not a hypothetical situation as statistics indicate that well over one-half of all O&MN projects are awarded in the last three months of the fiscal year.

The third major factor for consideration is the complexity of the project. The more complex the project, the greater the desire to ensure that a competent experienced contractor is performing the work. MCON projects are usually of the new construction type, and are frequently in the upper end of the under \$500,000 range being considered. More importantly, however, they are usually more complex. The work often involves the coordination of the efforts of several subcontractors, and often requires the use of a considerable amount of equipment. The concern here is not that the inexperienced contractor may lack the capital to obtain what is needed, but rather that his inexperience in overall supervision and coordination, particularly with regard to the proper order and timing of the various segments of the project, can result in prohibitively expensive mistakes. Errors can result in serious losses to the contractor, may cause crucial delays in the completion of badly needed facilities, and may result in marginally adequate construction.

The O&MN funded projects are generally not as complex as MCON projects. New construction projects in this area are few in number and ordinarily cost less than \$50,000. Alteration and repair projects, together with maintenance service contracts are much more numerous and are the source of almost all the contracts funded by O&MN. The majority of the alteration and repair contracts typically involve few trades on any one contract. Painting contracts, re-roofing contracts, repairs to pavement, and utility repair contracts are examples of the types of work involved. Maintenance service contracts such as janitorial contracts and ground maintenance contracts are typically even less complex and can be of a large dollar value yet require relatively unskilled labor.

All of the above factors may, depending on project funding, act to restrict the number of contracts deemed suitable for consideration for 8(a) award. There are other restrictions, imposed by the SBA, which do not vary because of funding but act more uniformly to reduce the number of those contracts which will be considered. Any contract for which public solicitation in the form of an Invitation for Bid, Request for Proposal, or Request for Quotation has already been issued, may not be considered. Contracts, such as Architect/Engineer services, which the procuring agency can award directly to a minority firm without going through the 8(a) program are not to be considered, nor are contracts which the procuring agency believes an eligible minority firm

to have a reasonable probability of obtaining competitively. Another factor, previously discussed in the paper, which also serves to remove contracts from consideration for 8(a) include the situation where there is a strong possibility that removing the contract from the competitive scene may cause an independent business concern to suffer a major hardship. Also discussed earlier was the removal of contracts in those instances where the SBA considers the percentage of 8(a) procurement to be excessive in relation to total procurement by the government. This last factor, however, has had no impact to date in the area of construction and maintenance service contracts.

4. SBA Goals as a Factor

In order to properly evaluate the suitability for 8(a) of any one contract with respect to these factors, there is one additional factor which is of the utmost significance--the needs of the SBA. If the SBA has no requirement for painting contracts, for example, they may be eliminated from consideration entirely. Construction and services procurement requirements are not met on a national level, as may be the case in manufacturing procurement requirements where an East coast minority firm manufactures widgets for a procurement office on the West coast. Requirements for construction and services invariably must be met by local contractors, and obviously the reverse is true, namely that the needs of 8(a) construction and service contractors must be met by federal agencies in their local area.

Under the present system, the dollar goals agreed to by the SBA and the other Task Force agencies in Washington D.C. at the beginning of each fiscal year become the driving force behind each of the agencies' efforts. In establishing these goals, however, the agreement matches only gross SBA needs and gross agency requirements. There is no attempt to determine whether ultimately the SBA and the agency will be able to match needs and requirements at the local level. For example, at the top, the SBA and DOD can agree that the former has a need for painting contracts and the latter has a requirement for painting. But if the SBA's painting contractors are not in areas where the DOD activities with the painting requirements are located, the two cannot be matched.

As previously discussed, the agreement by DOD at the Task Force level becomes the goal for DOD and is distributed among the services. In turn, within the services, the respective Secretaries set goals for the lower echelons based on the goals directed by DOD. This is no attempt to set goals for the various commands based on the SBA's contractor's needs in the local area of each command. The result of this failure to communicate in planning is that the goals set for any one procurement office are in no way related to the needs of the local SBA office, nor does the SBA relate its contractors' business plan projections to the requirements of the local procurement offices. Neither the system which is prescribed in the various applicable regulations, nor the system that actually exists, does much in the way of matching these

requirements. The regulations require that the SBA present its requirements to the Economic Utilization Advisor for the Secretary of the Navy, who will then attempt to locate suitable contracts to meet these requirements. In actual practice, a local procurement office will select an appropriate contract(s) in order to meet its goal, offer it to the local SBA office, and then wait to see if the SBA has or can locate a contractor who can do the work and needs the work.

This lack of communication frequently results in the SBA being unable to obtain the contracts it needs. The SBA has indicated that this is the reason for its chronic under-support of contractors and stated that it must get more control over agency requirements before the problem can be resolved. It is noted though that the agencies have consistently met or exceeded the SBA's goals for contract support, so it appears that the problem might better be resolved by having goals more consistent with the contractors' needs and then ensuring that the goals are met. The first part of this solution appears to be underway with the SBA's indication that goals in the future will be developed from the District level up, based on actual contractor projected needs as outlined in the business plans.

5. The Local Task Force Concept

For the second part of the solution, it is necessary that each procuring office establish its goals based on the needs and goals of its corresponding local SBA office. These procurement office goals can then be generated upward to the

DOD and Task Force level where they should correspond with the SBA's goals. At the Task Force level, goals would be perfunctorily agreed to by the SBA and the agencies and formalized by a redistribution back down the SBA and DOD command chains to the appropriate level. In order to meet established goals, SBA regional and district offices would then work with the procurement offices throughout the year to match individual contractors with individual requirements.

For the system to properly function, communication between the SBA and the agencies at the local level must be considerably improved. One method for this would be to have each SBA regional office meet at the beginning of each fiscal year with regional representatives of each of the federal agencies from which the SBA receives contracts. With the regions being far less in number than the districts (10 against 81), the regional level would be the optimal point in the infrastructure, since planning conferences would require far less manhours, yet still be able to correlate detailed information. The Engineering Field Divisions of the Naval Facilities Engineering Command would serve as Navy's regional representatives for construction and maintenance contracts.

This meeting between SBA Regional officials and representatives from other federal agencies would be similar to the present Interagency Task Force meeting in Washington and could be considered a Local Task Force. A matching of SBA needs and agency requirements would be accomplished for the forthcoming fiscal year. Presented with the SBA

detailed requirements by total dollar value, contract types, and specific local needs, the agencies could easily correlate this with their own requirements.

The agreement reached at this Local Task Force meeting would not link specific projects to the SBA's requirement, but would only recognize the existence of adequate agency requirements for the right type and amount of contracts in the right area. For example, assume the SBA needed \$700,000 in painting contracts for the San Diego area. If the Navy historically has awarded \$6 million in painting contracts in that area, the Engineering Field Division representative might agree to provide \$300,000 of the SBA's needs, with other agencies providing the rest. Then during the fiscal year the EFD would have to ensure that at least \$300,000 of all the painting contracts awarded that year were awarded to the SBA.

In implementing the system described above, there is one weakness which must be bridged to ensure success. As the Navy's representative at the regional meeting, the Engineering Field Division will be speaking not only for the contracts over which it has authority, but also for those contracts controlled by the individual activities in its area of cognizance. As discussed previously, the activities have authority over the majority of the contracts considered suitable for 8(a) award. Control by EFD is limited to certifying the need for the work to be done under any one of the contracts. Two questions then arise--one, how can the EFD's knowledgeably represent and make commitments for the activities; and two,

what can be done to ensure that the activities will fulfill the commitments made by the EFD's?

In response to the first question, the EFD can rely on historical data. A review of Appendix E shows that, historically, the dollar amount of the annual contract awards in the range suitable for 8(a) has remained relatively constant. This applies for both the EFD controlled awards and activity controlled awards. In addition to this historical data, the EFD usually has a reasonably accurate picture of an activity's forecasted contract workload because of the concept mentioned earlier of the EFD having to approve all construction and repair-type work for need and technical adequacy. The sum total of this knowledge would make the EFD fully able to confer with the SBA and make realistic commitments representing the activities.

The second problem, that of ensuring that the activities fulfill the commitments made by the EFD is the heart of the weakness in the system. By directing greater attention to the major procurement activities than the individual shore activities in establishing the Navy's goals for the 8(a) program, the ASN(I&L) has overlooked a significant area of contracting capacity. Although they may be aware of the 8(a) program, without direct encouragement to support the program, the majority of the shore activities have, to date, directed their attention to other problems and priorities. Greater support for and participation in the 8(a) program could be obtained from these activities if official directives were

issued by ASN(I&L) to the activities encouraging them to support the 8(a) program. Concurrently, the EFD's should provide the activities with a clear explanation of the program and an indication of the extent of its impact on their procurement process.

It is the authors' judgement that the above described system is the most logical and practical method for ensuring that the SBA's needs are fulfilled. It is therefore strongly recommended that such a system be implemented.

F. CONTRACTOR SELECTION AND NEGOTIATION

1. Selection of a Contractor

Following the receipt of an agency's requirement, the SBA must then select a contractor to perform the work. It is the policy of the SBA to select this contractor based on limited competition to the extent feasible and practicable. In selecting a contractor, the SBA will consider the needs of the contractor for the size and type of contract, the ability of the contractor to perform the work, and the assistance which the contract will provide the firm in becoming competitive. Price, however, will not be a factor in such competition. [Ref. 36, p. 17] As previously mentioned in the section of the thesis pertaining to the legal ramifications surrounding the 8(a) program, this method has been challenged as being tantamount to sole-source selection, but the courts have upheld the SBA's position. Because of the controversial nature of this particular SBA procedure, it is recommended that the SBA take steps to make this procedure

more formal. Even if the procedure was concluded with only a simple memorandum to file, it would serve as documentation to refute later allegations of the type mentioned above.

After selecting the contractor, the SBA Regional Office then submits a letter to OASN(I&L) containing all the pertinent information. This information includes the name of the contractor, the proposed contract, certification of the contractor's requirement for federal assistance, the contractor's qualifications, and lastly, that this contract be reserved for 8(a) procurement. If this request is approved, the SBA is so notified, and the Navy procurement office is authorized to proceed with negotiation.

2. Negotiation and BDE

There are two contracts and theoretically, two negotiations involved. The first contract is between the SBA and the procuring agency, and the second between the SBA and the subcontractor. In approaching these two contracts it is the SBA's policy to enter into a contract with another government agency at a price which is fair, reasonable, and compatible with 8(a) program objectives, and then to negotiate a subcontract with a minority contractor which is also fair and reasonable.

The SBA does not prepare its own cost estimate for the negotiation with the contractor, but instead, relies on an estimate prepared by the procuring agency, in this case the Navy. Along with this estimate, the SBA receives a complete set of plans and specifications pertaining to the

proposed contract. At this time, the SBA is also instructed by the Navy procurement office not to divulge the estimate to the prospective contractor.

For negotiation of construction contracts, the government estimate is used as the "current fair market value." If it is determined during the negotiation that an amount over and above the "fair market value" is necessary to insure profitability to the contractor, the SBA may fund this differential, known as Business Development Expense (BDE), from funds appropriated for this purpose. The ASPR position regarding BDE states " . . . any costs which are in excess of the estimated current fair market price anticipated under normal procurement procedures shall be funded by the SBA." In the past, the SBA's policy was not to fund BDE on construction contracts except in unusual circumstances. A reflection of this policy can be seen in Table 3, page 84. The underlying philosophy behind this policy is that each construction contract is unique and therefore any cost estimate is, at best, subjective. Unlike manufacturing contracts, where costs can be estimated quite precisely, construction contracts are subject to many variables, some of which are unknown at the time an estimate is made. Weather and differing site conditions are examples of these variables.

In its most recent SOP, the SBA changed this policy and now allows BDE on construction projects at the discretion of the Regional and District offices. The local SBA officers have reacted to this new policy in different ways. One

TABLE 3

BDE FOR FY 74TYPE OF PROCUREMENT FOR EACH REGION

Region	BDE-Manufacturing & Supply	Service	Construction	Total
I Boston	7 \$ 212,594	8 \$ 59,094	2 \$ 29,460	17 \$ 301,148
II New York	9 472,993	-	-	9 472,993
III Philadelphia	4 579,557	1 162,151	-	5 741,708
IV Atlanta	8 782,468	-	-	8 782,468
V Chicago	5 55,367	-	-	5 55,367
VI Dallas	7 411,874	2 2,290	-	9 414,164
VII Kansas City	2 71,155	-	-	2 71,155
VIII Denver	10 1,195,320	-	-	10 1,195,320
IX San Francisco	17 1,743,228	1 17,120	1 100,000	19 1,860,348
X Seattle	-	-	-	-
Totals	69 \$5,524,556	12 \$240,655	3 \$129,460	84 \$5,894,671
% of Total	82% 93.7%	14% 4.1%	4% 2.2%	10% 100%

Source: Small Business Administration, Business Development Expense,
Fact Sheet, 5 May 1975.

regional official stated that he has used BDE on selected construction contracts since the change in policy, while another still expressed opposition to providing BDE for any construction contracts.

While the procuring agencies conceded that government estimates in the area of construction may vary to a significant degree from actual cost, they also indicated that a policy of not using BDE for any construction contracts was unduly restrictive. This restriction prevents the award of any contract where the procuring agency and the 8(a) contractor fail to agree on contract price. Navy activities are bound by the ASPR to pay no more than the current fair market value. This value is based on the government estimate which may be revised where in error, but still represents the upper limit for the agency in the negotiation. The procuring agencies indicated a belief that in many instances sufficient data was available for the estimate to be in close agreement with the actual costs. They felt that for these contracts, in instances where the 8(a) contractor is unable to meet that price, refusal by the SBA to even consider BDE results in the time spent in negotiation being lost and procuring agency resources being wasted.

The authors, however, believe that a more basic question about BDE exists than whether more BDE funds should be spent on construction contracts. The authors question the SBA's use of BDE to fund the difference between the fair market value and the 8(a) contractor's price. With the BDE

expended in the form of a direct grant for a particular contract, it appears that the 8(a) contractor will have little incentive to develop meaningful price proposals if he believes that the difference between his proposal and the government estimate will be funded by BDE.

Under the present system, the contractor's ability to receive the BDE assistance is tied directly to the contract. If the contractor isn't awarded the contract, he doesn't receive the BDE funds. The purposes for which BDE can be utilized, however, according to the SBA's directives, are not necessarily tied to any specific contract. The SBA states that BDE may be granted:

"... where additional financial capacity is needed to overcome firm deficiencies to produce a product at a competitive unit cost. BDE may include, but is not limited to:

1. Capital equipment.
 2. Facility and production engineering.
 3. Special tooling and test equipment.
 4. Development and implementation of quality control procedures.
 5. Training costs--low labor productivity due to inexperience.
 6. Labor costs.
 7. Material wastage costs.
 8. General and administrative expenses.
 9. Differential due to low order purchasing power and/or material usage in comparison to its competitors.
 10. Interest expense to be borne by the 8(a) concern in connection with contract performance.
- [Ref. 36, p. 87]

The authors believe that these requirements may be satisfied through low interest loans and lines of credit which could be made available to the 8(a) contractor by or through the SBA. For example, the SBA could guarantee loans or lines of credit made by commercial lending institutions, thereby removing the high risk usually associated with a struggling firm. BDE funds would then be used to reimburse the creditors for those loans which are not repaid, rather than for direct grants to the 8(a) contractor. As the goal would be to reduce the lending institution's risk on an 8(a) contractor loan to that comparable of a non-minority contractor, and not to remove all risk, the SBA loan guarantee could be for less than 100%. The figure used would be based on the degree of risk to the lender. The use of loans and lines of credit would satisfy the contractor's deficiencies, and yet still provide adequate incentive to develop meaningful cost proposals. The loan need not be associated with any particular contract but rather be based on the contractor's overall needs. The authors therefore recommend that the SBA discontinue its present policy of utilizing BDE funds to provide direct grants to contractors, and institute a loan program using BDE funds either directly for the loans or as a guarantee for commercial lenders.

3. Negotiator Conflict of Interest

Although in theory the SBA receives a procurement request, selects a contractor, negotiates with this contractor, and then negotiates with the agency, the actual practice

varied by locality and by agency within a locality. Some SBA offices followed this theoretical procedure and others followed a policy of allowing agencies with sound estimates to establish a price which the 8(a) contractor must meet, with or without BDE, or there is no contract. Other SBA offices arranged for SBA, contractor, and agency personnel to all be present at one negotiation with the procuring agency conducting negotiations directly with the contractor, and the SBA acting as an observer. There were even instances where agency procurement negotiators dealt directly with the contractor in the absence of any SBA representatives.

These last two variations resulted primarily from the SBA's apparent inability to handle negotiations in the early years of the program due to a lack of qualified personnel. Regional and district SBA representatives indicated that qualified construction negotiators were being hired and the practice of having agency personnel negotiate directly with the contractor may be discontinued. Procedures more closely aligned to the theoretical procedure would be followed with the SBA negotiator responsible for obtaining a price which is fair and reasonable to both the minority contractor and the government, and in consonance with 8(a) objectives. As mentioned earlier, the SBA negotiator would attempt to arrive at this price by reviewing both the government's estimate and the contractor's estimate for accuracy and validity. The SBA negotiator would act as the man in the middle, negotiating separately with both the contractor and the government.

This procedure appears contrary to normal procurement practice. Under normal procurement procedures, the agency acquisition negotiator receives a cost estimate in the form of a proposal from the contractor which he reviews prior to entering actual negotiation. During negotiation, it is the role of the government negotiator to obtain the best possible contract package for the government, while the contractor simultaneously protects his own interests. This is not the situation that exists in the typical 8(a) negotiation. The contractor (the SBA) does not prepare his own proposal, but rather is provided with a cost estimate by the procuring office. The SBA negotiator not only uses this as a basis to negotiate a fair and reasonable price with the 8(a) contractor, but also uses this estimate to negotiate with the agency that prepared it. The SBA is thus required to represent the interests of the 8(a) contractor in the negotiations between the SBA and the agency, and represent the government in the negotiations between the contractor and the SBA. This results in a conflict of interests, which in the authors' judgement, will result in favor of the contractor as the SBA's primary objective in the 8(a) program is to produce viable minority firms. To truly look after the interests of the minority contractor, it is doubtful that the SBA negotiator will also seek to obtain the best price for the government.

The authors, therefore, propose that the SBA not be permitted to see the government estimate. It is further

proposed that the SBA no longer act as a negotiator between both the 8(a) contractor and the procuring agency, but instead act only in an advisory capacity to the 8(a) contractor. The subcontractor could be assisted by SBA personnel in preparing a price proposal based solely on the plans and specifications. Negotiations would be conducted with SBA, subcontractor, and procuring agency personnel all present, but with the actual negotiation being primarily between the procuring agency and the subcontractor. The presence of the SBA in the negotiation would serve to preserve the legality of the contract between the SBA and the procuring agency. In the event that the contractor's proposal is significantly below the government estimate, the government estimate should be re-evaluated for its validity and if deemed accurate, the contractor should be made aware that his proposal is considered suspect in a particular area, e.g., the amount of labor required for the job. It is believed that the proposal whereby the SBA acts as an advisor to the subcontractor in negotiations will benefit both the contractor, in that valuable on-the-job experience will be gained, and also the procuring agency since there will be a greater guarantee that a fair price will result.

Concurrent with the implementation of this change, it is further recommended that changes be made to the present policy within the Navy concerning approval of contracts to be awarded to the SBA. In addition to requesting approval to negotiate from OASN(I&L) after the SBA has selected a

contractor, OASN(I&L) must again be notified to obtain approval to award after negotiations are complete. The Engineering Field Divisions of NAVFAC have the engineering competence and contracting experience to grant approval at their level. Approval at this level would reduce the paperwork involved in the administration of the program and provide a reduction in the time required to negotiate and award, a factor which can frequently be critical. It is therefore recommended that the ASPR be amended to provide the EFD's (and pertinent other procurement offices) authority to award contracts to the SBA, and approve the results of the negotiation.

G. ADMINISTRATION

Upon receipt of approval from OASN(I&L) to award the contract, the procuring office prepares two contracts for signature. The first contract is a prime contract between the Navy and the SBA, and the second is a subcontract between the SBA and the 8(a) contractor. The administration of these contracts is controlled by the provisions in the contracts and since the two contracts have different provisions, each can affect the administration differently. Understanding the differences between these two contracts is necessary to understand the problems which may develop in the administration of the contracts.

1. The Contracts

The prime contract between the SBA and the Navy is prepared on the standard contract form, but incorporates no general provisions as they are not operative between two agencies of the government. The prime contract recognizes, however, that the subcontract does contain general provisions, and delegates the procuring agency to administer the subcontract between the SBA and the 8(a) contractor. [Ref. 36, p. 18] In the administration of the subcontract, the procuring agency has authority to invoke all but eight of the clauses in the general provisions. [Ref. 1, p. 1:127] These eight clauses can only be invoked by the SBA in appropriate cases when requested by the DOD contracting officer. If the SBA does not agree with the DOD contracting officer's request, the case is referred for decision to the Secretary of the Navy or his designee. [Ref. 1, p. 1:127] These eight clauses are:

Termination for Convenience

Changes

Differing Site Conditions

Default-Damages for Delay-Time Extensions

Suspension of Work

Disputes

Price Reduction

Payments to Contractor

[Ref. 1, p. 1:127]

The subcontract between the SBA and the 8(a) contractor is prepared on standard contract forms. In recognition of the fact that the 8(a) contractor is a subcontractor, and to protect the interests of the procuring agency, an amendment to the "Disputes" clause is incorporated in the subcontract. [Ref. 1, p. 1:126] The amendment specifies that the "duly authorized representative" in the "Disputes" clause refers to the Armed Services Board of Contract Appeals (ASBCA). The result of this amendment is that disputes between the subcontractor and the Navy administrator are referred to the ASBCA rather than being settled by the SBA.

Procedurally, the contract between the agency and the SBA is signed first. This avoids the situation where the 8(a) contractor has a contract to perform the work, but the SBA has no contract with an agency requiring the work and providing funds for the work.

2. Routine Administration

In the day-to-day administration, the 8(a) contract does not differ significantly from other contracts. The SBA is required to maintain contact with the subcontractor and a copy of all correspondence of any consequence from the administrator to the subcontractor is provided the SBA. Any action which requires a change to the prime contract will generally necessitate a corresponding action to the subcontract.

Payments to the 8(a) contractor are effected directly between the contractor and the administering procurement office. In those instances where the SBA has agreed to pay

BDE, these funds are furnished to the procuring agency by the SBA where they are expended during the progress of the contract and incorporated into the payments to the contractor. [Ref. 36, p. 89]

3. SBA Responsibility

The contractual arrangement in 8(a) contracting is a unique experience for the administrator. Having awarded a contract to the SBA for the performance of some service or provision of some product, he is then appointed by his own contractor to administer the subcontract, and told by his own contractor (the SBA) that he (the administrator) cannot take any action affecting certain terms of the contract without the agreement of the contractor (the SBA). While in actuality the situation is not as confusing as that description might suggest, all of the questions regarding the arrangement have not been answered from the viewpoint of contract law.

In the area of the Navy's construction and maintenance contracts, there have been relatively few instances where the need arose to invoke any of the restricted clauses. In those instances that have arisen to date, the problems have been resolved at the SBA-NAVFAC level.

What has not been resolved to date is the responsibility of the SBA. The SBA has a responsibility to the Navy to provide the required product or service. Under normal contract procedures, the Navy may recover damages from the contractor for failure to meet his contract. Because of the inability

of one branch of the government to file suit against another, the Navy has no such recourse against the SBA. If the 8(a) contractor fails to perform, the SBA attempts to locate another 8(a) contractor to perform the work. If another contractor cannot be found, the procuring agency is requested to recall the procurement, and arrangements made to terminate the contract without cost to either party. [Ref. 36, p. 80] The authors question this concept of whether a contract can be terminated without cost to either party. The question also arises as to the extent of the SBA's responsibility for the failure of the 8(a) contractor. As the primary source of management counsel and assistance, it appears that a certain amount of responsibility would accrue to the SBA. The authors believe that there remains room for considerable clarification in the legal aspects of the dual contract arrangement.

H. CONTRACTOR GRADUATION OR TERMINATION

The SBA's recent attention to the development of goals utilizing graduates as a measurement of the success of the 8(a) program focused attention on another problem--how to determine when a contractor was ready to graduate? Concurrently, the SBA directives to the district offices to terminate those contractors failing to make progress focused attention on the problem of determining when a contractor should be terminated. Discussions with SBA personnel indicated that prior to the issuance of the current SOP 60 41 1 in November 1974, there was only limited guidance available on how to

make these determinations. This new SOP provided more specific guidance in these two areas by listing several criteria for each action which should be considered in determining whether a contractor should be graduated or terminated.

In considering whether a firm is ready for graduation, SOP 60 40 1 states that generally a firm has met the criteria for completing the program when it has achieved the objectives of its approved business plan. In addition, twelve other criteria were listed which should be taken into consideration in determining whether the firm has completed the program. These criteria include such data as net profit earned each year, current financial indicators, progress in competitive bidding, attraction of new equity, etc. [Ref. 36, p. 83-84]

Separate criteria were provided for determining whether a firm should be terminated from the program by withdrawing the support being provided by the SBA. Totaling nine in number, these criteria specify that termination may result for various reasons including business failure of the firm, changes in ownership or management without approval by the SBA, failure to operate in an ethical manner, failure to provide the SBA with quarterly financial data, etc. [Ref. 36, p. 81]

Although neither of these lists of criteria are completely objective since absolute values are not provided for the regional and district SBA offices (e. g., requiring a current

ratio of 1 to 1), they do provide firm guidance to the local SBA offices as to what factors should be considered. Thus, a degree of flexibility is allowed the local SBA office in determining exact graduation or termination criteria. This flexibility is required because specific values for these criteria vary by industry, firm, and specific situation. It would be extremely difficult for exact criteria to be established at the Washington level to account for the many variables which affect the termination or final graduation of each specific contractor. The authors believe a better approach is to require that the regional and district SBA offices establish and document specific values for the termination or graduation criteria of each contractor as he is admitted to the program. Adjustments to these values can be made as required as the contractor progresses through the program.

Concerning graduation, although industry ratios can be used as guides, the final judgement on the validity of the exact criteria established by the local SBA office cannot be made until it can be determined how many firms of similar characteristics were successful based on these criteria. By keeping data on the firms who have graduated from the program, the SBA can eventually develop a set of successful criteria for guidelines in setting exact criteria for future firms.

The authors therefore recommend that the SBA require that its regional and district offices establish and document specific criteria for termination and graduation from the 8(a) program for each contractor as that contractor is admitted to

the program. In addition, and in consonance with a previous recommendation of monitoring the progress of firms after graduation, it is suggested that records of those firms who have completed the program be closely scrutinized to further assist in establishing legitimate graduation criteria for future 8(a) firms.

IV. AGENCY PARTICIPATION AND FACTORS INVOLVED

In the past, attempts to measure support for the 8(a) program by the Navy, NAVFAC, and the EFD's have been limited to comparing total dollar volumes attained in 8(a) awards. These have been compared at the various levels, such as between the Army, Navy, and Air Force and within the Navy between the various procurement commands. The comparisons have been of two types--comparing the absolute dollar volumes attained by various agencies, and comparing the success of each agency in attaining goals set for it. Neither of these comparisons, however, gave any recognition to certain factors influencing the amount of support which the agencies can provide the program. These factors include the following:

1. Differences between the services in the amount of funds they have to expend in supporting the 8(a) program.
2. Variations in the geographical distribution of numbers of 8(a) contractors, types of contractors, procurement offices, and types of procurement requirements.
3. Annual variations in the geographical distributions.
4. Nonuniformity in SBA support.

This chapter discusses the impact of these factors on the support provided to the 8(a) program by the various agencies

and presents a system which the authors believe account for them in a relatively simple fashion.

A. SIZE DIFFERENCES

A significant factor affecting the degree to which an agency can support the 8(a) program is its total amount of procurement that is suitable to meet the needs of the 8(a) contractors. This differs considerably between the Services and between procuring offices within a Service, making straight dollar comparisons unfair to those with lesser amounts of total requirements suitable for the program. For example, if the Army has procurement requirements twice as large as the Air Force, it appears illogical to require the Air Force to attain the same dollar level as the Army in order to demonstrate an equal degree of support for the program.

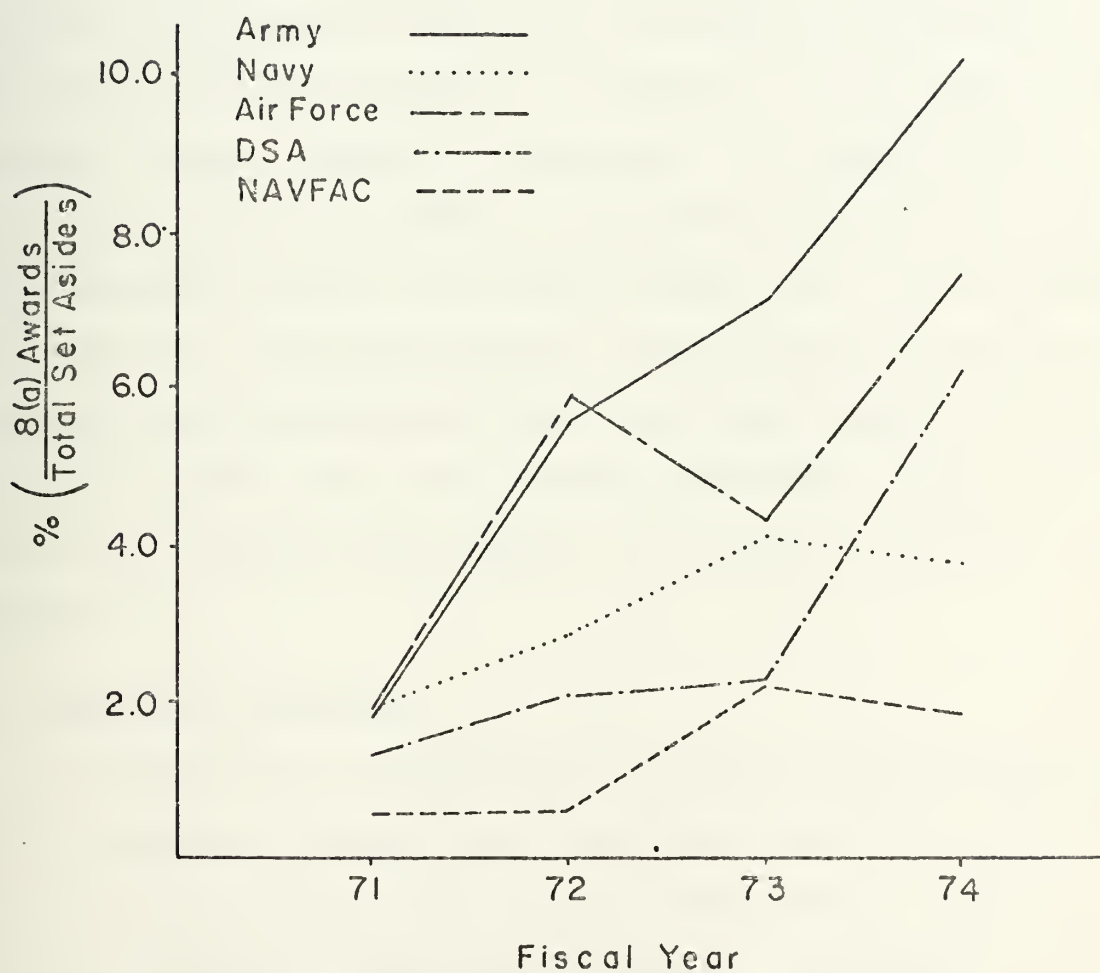
In order to make a comparison, it therefore is necessary to find a measure which eliminates any size differences between the various departments. This applies for comparisons both at the DOD level and within the Navy. One method is to contrast the contracts actually awarded under 8(a) with the total requirements which could theoretically be awarded through the program. Expressed as a percentage, this ratio would measure an agency's performance against its own potential. These percentages could then be compared between agencies. Choosing this approach, the authors were then faced with the problem of calculating the potential agency procurement needs that could be satisfied by an 8(a) contractor, as the actual

awards were readily available from agency records, but potential agency requirements were not.

In reviewing existing data to determine some measure of potential 8(a) requirements, such a measure was found in the form of small business "set-asides." Set-asides are competitively bid contracts which are restricted by the procuring agency for accomplishment by small business, on the premise that small business is capable of performing the work. Since all 8(a) contractors are small businessmen, it is reasonable to assume that set-asides are a rough measure of potential work for them. Most set-asides are required by law but others are set aside at the agency's discretion. Although small businesses do in certain cases successfully bid for non-set-aside contracts, they win these contracts away from big business solely on the basis of competition with big business. Thus, only set-asides represent a sure potential for the 8(a) program, as there is a requirement that they go to a small business firm. The authors therefore reasoned that the total amount of set-aside contracts constituted the potential for 8(a) awards. These annual totals were used with the total annual 8(a) awards to obtain the figures shown in Appendix F, for DOD as a whole, for each of the Departments within DOD and for NAVFAC. The annual total amounts of 8(a) awards, for each service, DOD, and NAVFAC expressed as a percentage of the total set-asides are illustrated in Figure 4. Similar data was compiled for the Engineering Field Divisions of the Naval Facilities Engineering Command. The results of these

Figure 4

8(a) Awards As a Percentage of
Total Small Business Set Asides
For DOD Agencies



Source: APPENDIX F

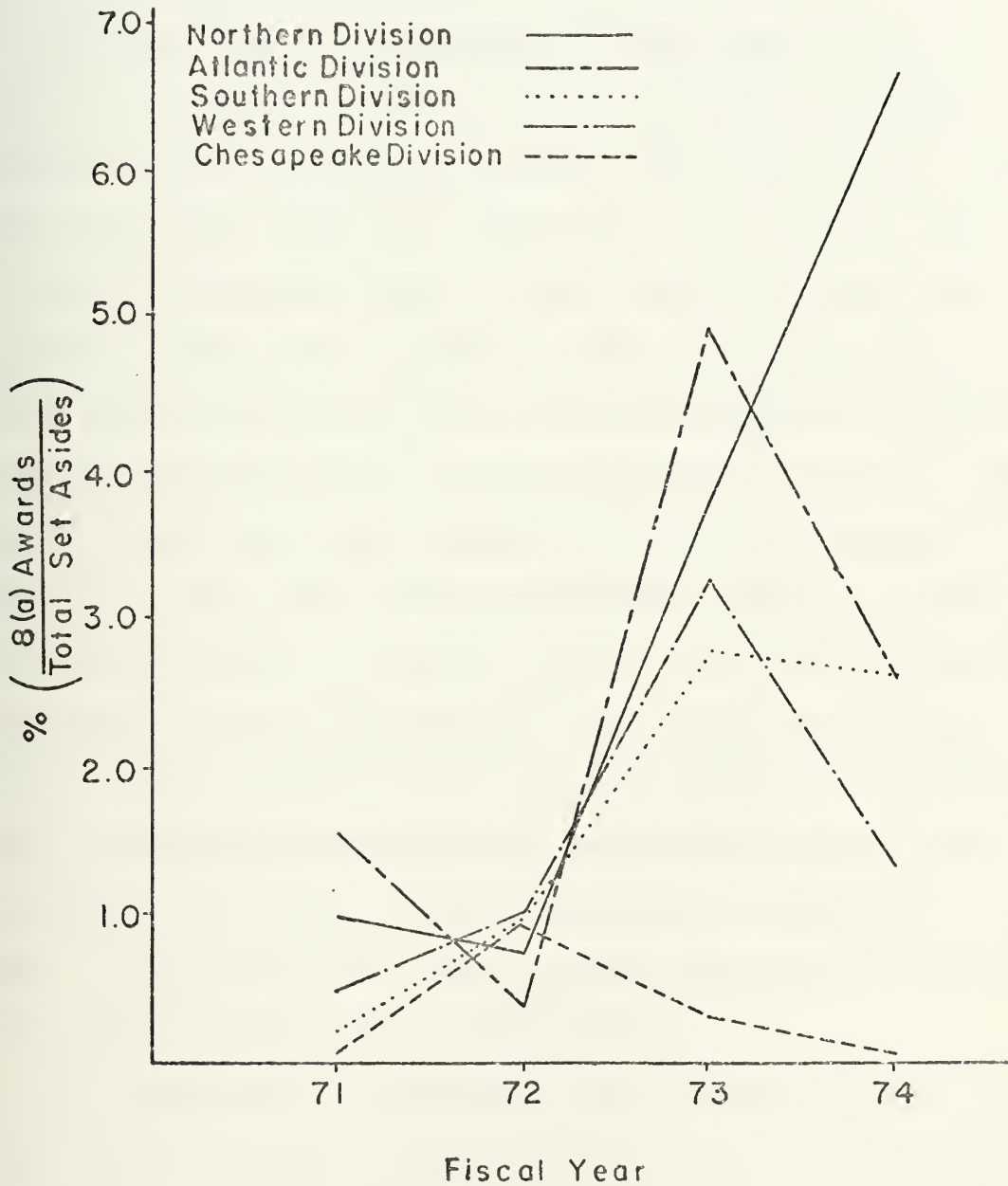
calculations are contained in Appendix G with percentages displayed graphically in Figure 5. The impact of NAVFAC on the Navy's performance is significant. During the past four fiscal years, construction and maintenance Set Asides have accounted for an average of 55% of the Navy's total dollar volume of Set Asides. As indicated in Appendix F, this contribution amounted to \$243 million of the Navy total of \$427 million in FY 1974. In addition, the number of contracts awarded by the agency should also be considered since the SBA may need greater numbers of contracts in one region vice another. Larger numbers of contracts, as a general rule, require more time and effort to administer even though their total aggregate dollar value may be less than a smaller number of contracts. Although Figures 4 and 5 portray varying levels of support by the different agencies, a true measure of each agency's support must also consider the impact of the other factors influencing this support as delineated earlier in this chapter.

B. GEOGRAPHIC VARIATION

To successfully consummate the award of an 8(a) contract, it is necessary to match the contractor's service or product with the proper type of procurement requirement, i.e., a painting contractor needs painting work. In predicting whether such a match can be accomplished by a procurement office of a particular agency at any given point in time, there are essentially five factors for which variations in geographic distribution must be considered. These factors are:

Figure 5

8 (a) Awards As a Percentage of
Total Small Business Set Asides
For Engineering Field Divisions



Source: APPENDIX G

1. The types of contractors
2. The numbers of contractors
3. The requirements of the procurement offices
4. The agency procurement offices
5. Other federal agencies

The geographic distribution of the types of contractors must be considered because, of the three general types, i.e., supply, construction, and service, the last two must have their needs met within the same local area. This requirement to match construction and service contractor needs with procurement requirements within the same local area exists because these contractors must locate the majority of their equipment and personnel on the work site or near it. The mix of contractor types, however, varies by location. One area may contain twice as many painting contractors as roofing contractors while in another locality the situation may be reversed, or more significantly, may have neither one. Although Table 3 does not break out contractor types into sufficient detail to accurately match the contractor's type of service or product with the corresponding type of procurement requirement, it does show that there exists disparities in the mix even between these general categories.

The variation in contractor type relates directly with the variation in the requirements of the procurement office. A mismatch in the requirements of a local procuring office and the types of work performed by the available 8(a) contractors, will adversely affect the amount of support an

TABLE 3
TOTAL SBA 8(A) PROCUREMENTS FOR FY 74
(In thousands of dollars)

SBA REGIONS	CONSTRUCTION	SERVICE	SUPPLY
I	2,256	8,745	366
II	9,591	17,785	6,720
III	7,097	27,879	3,944
IV	6,718	29,639	7,022
V	10,273	7,604	2,629
VI	4,622	20,392	13,044
VII	2,168	7,668	574
VIII	1,999	4,322	14,968
IX	13,708	18,205	17,584
X	6,272	5,429	15
TOTAL	64,704	147,668	66,866
%	23	53	24

Source: Small Business Administration, Status Report of 8(a) Contracts, Washington, G. P. O., March 31, 1975.

agency can provide the 8(a) program in the area of construction and service contracts.

The ability to match a contractor's needs with procurement requirements is affected not only by variations in the type of contracts, but also by the number of contractors in the area. This varies considerably nationally. Table 4 shows the distribution of all 8(a) contractors by SBA region with a

breakout of construction and maintenance service contractors.*
As the geographic distribution of an agency's local procurement offices also varies, an agency may or may not be located in areas where there are enough 8(a) contractors for the agency to make a contribution to the 8(a) program comparable to another agency. An example of these variations is provided by the Navy which is primarily located on or near the two coasts, while the Army has significant concentrations in the interior states.

Not only must the geographic distribution of an agency's own offices be accounted for in determining the proper level of support which an agency should provide the 8(a) program, the effect of the geographic distribution of the local procurement offices of other agencies must be recognized. This effect can best be illustrated by an example. A DOD activity of moderate size in Nevada may be the only federal procurement office in a very large geographical area and be required to provide all the support for 8(a) construction and maintenance contractors in the area. Conversely, an activity of similar size in central Georgia may not have to provide any support because of a preponderance of other federal procurement offices in that area.

Thus, the national geographic distribution of minority contractors, the type of work they perform, the national

*The primary interest of this thesis is in the area of construction and maintenance for Navy shore facilities, therefore maintenance service contractors (Janitorial, ground maintenance, etc.) were separated from the remaining service contractors (food service, KP, etc.).

TABLE 4
DISTRIBUTION OF 8(A) CONTRACTORS
BY SBA REGION AS OF OCTOBER 1974

Location	C&M*	TOTAL 8(a)	Location	C&M*	TOTAL 8(a)
<u>Region I</u>			<u>Region VI</u>		
Maine	2	3	Texas	72	125
New Hampshire	1	1	Louisiana	35	46
Vermont	1	2	Arkansas	11	14
Massachusetts	44	95	New Mexico	26	43
Rhode Island	4	6	Oklahoma	14	25
Connecticut	11	32		158	253
	63	139			
<u>Region II</u>			<u>Region VII</u>		
New York	68	156	Iowa	19	22
New Jersey	18	37	Missouri	46	75
	86	193	Nebraska	11	16
			Kansas	22	36
				98	149
<u>Region III</u>			<u>Region VIII</u>		
Pennsylvania	41	71	North Dakota	4	5
Delaware	4	4	South Dakota	6	7
Maryland	25	72	Montana	2	6
Washington, D.C.	63	181	Wyoming	3	3
Virginia	50	102	Utah	5	8
West Virginia	7	8	Colorado	29	63
	190	438		49	92
<u>Region IV</u>			<u>Region IX</u>		
North Carolina	14	31	Arizona	17	24
South Carolina	10	13	Nevada	7	7
Georgia	19	34	California	130	290
Florida	28	44		154	321
Alabama	16	28			
Mississippi	8	12			
Tennessee	19	26			
Kentucky	8	10			
	122	198			
<u>Region V</u>			<u>Region X</u>		
Ohio	58	84	Washington	41	67
Indiana	16	22	Idaho	0	1
Illinois	53	102	Oregon	11	21
Michigan	16	35	Alaska	16	18
Wisconsin	12	21		68	107
Minnesota	15	25			
	170	289			

*Includes only construction and maintenance service contractors.

Source: Small Business Administration, Firms in the 8(a) Business Development Program, Washington, GPO, October 1974. (Calculations and chart by authors)

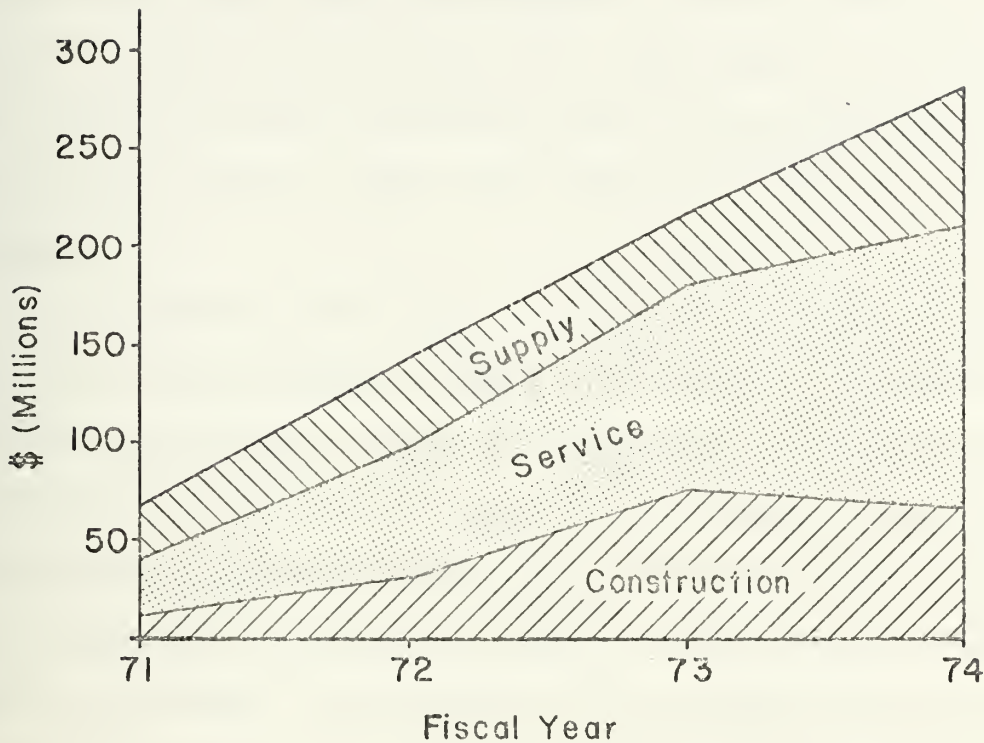
geographic distribution of an agency's local procuring offices as well as the mix in types of procurement requirements at these local procurement offices, all interrelate and play a large role in determining the level of support which an agency can provide to the 8(a) program.

C. ANNUAL VARIATIONS

Any effort to analyze and determine the variables noted in the preceding section in order to quantify them for future prediction must also consider that any or all of them will change. The annual changes in the three general types of supply, services, and construction contracts over the last four fiscal years is shown in Figure 6. These annual variations are caused by factors including changes in the SBA's portfolio of contractors and modifications in the business plan projections of those in the program as a result of their progress through the program. Changes of this type result in alteration to both the types of contractor requirements at the local level and the contractor density distribution on the national level. The SBA's present proposal to reduce the number of contractors in the program to 1260 will also undoubtedly cause further variations in contractor distribution.

Mixes in local procurement office requirements will vary according to the evolving needs of the agencies which they support. The opening of new bases and closure of existing ones will readjust the national geographic distribution of that service's procuring offices. Base openings can also reduce the share of 8(a) support other agencies in the area

FIGURE 6
DOLLAR VALUE OF TOTAL SBA
8(A) PROCUREMENTS BY TYPE



Source: Small Business Administration, Status Report of 8(a) Contracts, Washington, GPO, March 31, 1975, (calculations and graph by authors).

contribute, just as closures can increase the share of those agencies remaining in the area. Regardless of the reason, geographic distributions do not remain constant, but rather, are constantly shifting in response to changing conditions.

D. NONUNIFORMITY OF SBA SUPPORT

The fourth factor to be considered is the most difficult to quantify, but has an influence on the support which an

agency provides the program as great as that of any of the other factors. By being the determining factor in whether a contractor gets into the program, the SBA controls the upper limit on which a procuring office can support the program. This factor is thus intertwined with the previous two factors in that the SBA can limit the entry of contractors into the program.

The authors do not mean to imply that SBA personnel are opposed to the program or have any biases or prejudices against certain contractors. What is recognized is that the SBA has limited resources in terms of both funds and personnel, although the aggressiveness and enthusiasm of the personnel can frequently increase the extent to which these resources can be stretched. Nevertheless, once an SBA office has reached its limit, in terms of the number of contractors it can adequately support, the needs of these contractors establish the limits on how much support a procuring office can provide the program, not a goal established for the procuring office by higher authority.

E. A METHOD FOR EVALUATION OF AGENCY SUPPORT

The effects of all the factors previously discussed in this chapter must be considered in attempting an accurate evaluation of any agency's performance in supporting the 8(a) program. One method for evaluating agency support is to establish a reasonable goal as a benchmark upon which the actual support provided can be compared. For DCD and the Navy, in the past this goal was established using a "top

down approach," i.e., computing the goal at the headquarters or higher authority level, subdividing this figure, and distributing to each local procurement office their share of the total goal. Use of this approach requires development of a formula or system to account for the size, geographic distributions, and most importantly, their interrelationships, if it is to be meaningful. In the authors' opinion, development of such a system would be extremely complex, cumbersome, and of questionable accuracy.

A system which the authors believe would satisfactorily account for the effects of size, geographic distribution, and other factors in attainment of goals is that described as the "Local Task Force Concept" discussed earlier in this thesis. By establishing goals from the "bottom up," all of the variables related to these factors would automatically be accounted for when the Regional SBA office and the regional agency representatives agreed on mutual goals which would recognize the limitations of each of the parties to the agreement.

Based on the projected number of contractors they intend to support in their area, Regional SBA officials are in the best position to estimate the contractors' needs, by type and location within the region, for the upcoming year. For the Navy's shore facilities construction and maintenance program, the EFD's are in the best position to forecast their projected procurement requirements, also by type and geographic location. At the local task force meeting, the SBA and the agencies can match contractor needs with agency requirements and agree as

to how much 8(a) support each agency will provide. The agency's goals will be generated from this meeting and will be in consonance with SBA needs. Measurement of agency support can then be based on how well the agency meets these goals. For example, the support actually provided expressed as a percentage of the established goal would be an adequate relative measure of support.

This system does, however, have one major weakness, in that, agencies who do not enthusiastically support the 8(a) program may leave the local task force meeting with a goal based on a disproportionately lower share of the projected contractor needs. To ascertain if established goals represent an equitable distribution of 8(a) procurements among agencies, the amount of 8(a) awards expressed as a percentage of the agencies' potential 8(a) requirements could be monitored and corrective action taken as necessary. As discussed earlier in this chapter, this measurement also tends to mitigate size differences between agencies.

The authors recommend that the "Local Task Force" concept be used together with the measurement discussed in the preceeding paragraph to monitor and evaluate agency support to the 8(a) program. In addition, the authors recommend that responsibility for the 8(a) program at the local procurement office level be placed with the Small Business Specialist attached to the procuring office, in order to separate as much as possible the responsibility for meeting the procurement requirements of the agency from the responsibility for ensuring that the 8(a) program is supported.

V. RECOMMENDATIONS AND DISCUSSION

In reviewing the efficiency of the SBA's administration of the 8(a) program, and in particular as it relates to the Navy and NAVFAC, several deficiencies which led to inefficiencies in operation were noted and recommendations for improvement were presented in previous chapters. Implementation of these recommendations should considerably improve the existing 8(a) program and eliminate many of the conflicts in its present operation. There are, however, two basic weaknesses which are inherent to the program and seriously limit its success. These weaknesses cannot be corrected as long as the 8(a) authority is used. The first weakness is the conflict between the basic philosophy of the procurement offices which use formal advertising to obtain the lowest reasonable price for the government, and the philosophy of the 8(a) program which uses a negotiated process in which price is not a dominant factor. The second weakness results from the lack of control the SBA has over the supply of contracts, which in turn prevents the SBA from being able to ensure that its contractors receive the contracts they need.

The following alternative to using the 8(a) authority is suggested as a vehicle for the elimination of these weaknesses. This alternative is that the SBA no longer act in a prime contractor role with other government agencies, but instead act purely in an advisory role to the contractor. The minority contractor would obtain contracts through the

formal advertising process vice a negotiation process. The contractor would be assisted by SBA personnel in the bid preparation and provide training in the procedures of formal advertising. The resultant contract under this alternative would be between the procuring agency and the minority firm. The subcontract between the SBA and the minority contractor, and the prime contract between the SBA and the procuring agency would be eliminated. The focus of the SBA's efforts would go towards finding contracts to bid on, providing loans and lines of credit to the firm, and a general education as required in business and government procedures, especially contract administration. Other SBA programs would be utilized, where applicable, in providing this assistance and training.

This alternative eliminates the conflict thrust upon the procuring agency regarding the use of a negotiated process, since the procuring agency would utilize the formal advertising process and all contractors, both majority and minority, would be able to bid for the contract. In addition, the minority contractor gains the added benefit of acquiring experience in the actual process which will be utilized after disassociation from the SBA should the contractor choose to do business with the government. The minority firm should also be encouraged to do business in the civilian sector.

Because the contractor can bid on any contract he desires, the SBA would no longer be hampered by a lack of control over procurement requirements. The SBA would, however, closely advise the contractor on which procurements would be suitable for his accomplishment. Program effectiveness would be

measured by the number of contractors graduating from the program and remaining viable, so the SBA would have an incentive to properly assist the contractors to insure that they win some awards and properly perform the job.

This alternative procedure of utilizing the formal advertising process is not, however, without problems. The SBA will still have to perform its mission with limited resources and a third inherent weakness which creates conflict will still be present. This inherent weakness, as discussed earlier in the paper, is the conflict which results from the SBA trying to meet the needs of small businessmen presently in existence while simultaneously trying to aid minorities. These existing small businessmen, who are mostly social majority firms, will still view the program of aiding minority small businessmen as a threat to their existence.

Since the SBA is tasked with helping both existing and minority small businessmen, situations may arise where the SBA official may feel his actions to help only minority firms are at the expense of assisting all firms. The authors feel this conflict can be mitigated by keeping separate in the SBA organization, those personnel engaged in aiding socially or economically disadvantaged firms. The authors also believe this alternative program should be retained with the SBA due to their knowledge in the area of small business.

It is therefore recommended that this alternative procedure replace the 8(a) program. If, however, the 8(a) program is to continue, the recommendations noted in this thesis must be implemented to correct the deficiencies in the present

program in order to maximize its effectiveness as a vehicle for promoting viable minority firms. A summary of these deficiencies and corresponding recommended corrective actions follows.

Deficiency: Due to limited resources, i.e., the size and capacity of the SBA staff, the SBA adopted a policy of allowing only a specified number of contractors in the program. The SBA chose to retain only those contractors who show the greatest potential for becoming viable minority firms and concentrate their limited resources on these firms. Such a policy may eliminate some of the very firms who need help the most.

Recommendation: That the SBA transfer 8(a) contractors to other SBA programs when they have developed to the point where these other programs can provide adequate support, thus permitting more lesser developed contractors to enter the program.

Deficiency: The SBA proposed to limit the number of firms in the program to 1260. Under this proposal, new firms will be able to enter the program only when firms presently in the program can be graduated or terminated. As it appears unlikely that the rate of contractor exits will be large enough to allow entry of all minority firms desirous of 8(a) assistance, the SBA's policy of limiting the number of contractors in the program has created the problem of deciding which contractors should be allowed in the program.

Recommendation: That the SBA direct 8(a) program applicants whose needs can be met by other SBA programs to those programs and screen the remaining applicants to determine those that

meet the criteria for program entry. Firms who qualify for program entry and are in need of training and educational assistance would be scheduled for such assistance on a first come, first served basis. To promote a small and accurate schedule, firms scheduled for assistance in the distant future would be required to periodically reconfirm their desire to participate in the program. Firms, which either don't need or have completed training, would go on a waiting list of firms that are ready to participate in an actual contract. As openings in the program become available in the firm's area of expertise, the firm would be admitted to the program.

Deficiency: Although the SBA's policy was to reduce the number of contractors in the 8(a) program to a level which its staff could adequately support, the number of contractors that the SBA proposed to retain had contract support requirements which exceeded the 8(a) contract support requested by the SBA from other government agencies. Consequently, contractors in the 8(a) program have been chronically underfunded because the SBA has established its goals for agency contract support independent of the contractor's needs.

Recommendation: That the SBA use the projected needs of the contractors to be in the program for the forthcoming year to generate the support levels to be requested from the procuring agencies. If the requested support cannot be provided by other agencies, the number of contractors in the program should be reduced to match that support which can be provided. While it is realized that such a contractor reduction may further eliminate contractors most in need of assistance, it

is considered to be the most workable solution to the problem of limited resources. Therefore, the number of contractors in the program should be based on both the SBA's staffing level and the contracts which the procuring agencies can provide the SBA.

Deficiency: Because of its limited resources, the SBA presently authorizes a sponsorship program whereby established firms assist 8(a) firms in managing their business operation and provide them with capital and training. There have been many abuses in this program whereby an established firm set up a new 8(a) firm for purposes of gaining contracts and profits for which they would otherwise be ineligible. Ownership and control was in actuality retained by the non-disadvantaged firm.

Recommendation: That the SBA abolish the sponsorship program. If, however, the SBA chooses to continue this program, then it is recommended that the SBA more closely monitor the program and establish a contingent fee concept, whereby the sponsor receives a consulting fee only when the 8(a) contractor becomes viable.

Deficiency: If it is determined during negotiation that an amount over and above the government estimate is necessary to meet a firm's needs and promote the contractor's growth, the SBA may fund this differential in the form of a Business Development Expense (BDE). This BDE takes the form of a direct subsidy for a contract and thus provides little incentive for the contractor to prepare a meaningful cost

proposal since he knows the difference between his proposal and the government estimate may be funded by BDE.

Recommendation: That the SBA discontinue its present policy of utilizing BDE as a direct grant on individual contracts, and instead institute a loan program using BDE funds either directly for contractor loans or as a guarantee for commercial lenders.

Deficiency: For a procurement requirement, SBA negotiators are presently provided by the procuring agency with a set of plans and specifications, plus the government cost estimate. The SBA negotiator uses this estimate as a basis for negotiation with both the subcontractor and the procuring agency. As the SBA negotiator has a primary responsibility to promote the viability of the subcontractor, it seems unlikely that he will also be able to protect the interests of the procuring office.

Recommendation: That the SBA be given only the plans and specifications, and not the government estimate. Subsequently, the SBA would assist the subcontractor in preparing his proposal based only on the plans and specifications, and negotiations will take place with SBA, subcontractor, and procuring agency personnel all present. The primary focus of the negotiation will be between the procuring agency and the subcontractor, but the SBA may assist where necessary. The price agreed upon by the personnel present at the negotiation would be the price of the subcontract between the SBA and the 8(a) contractor. This price would also be the amount reflected in the contract between the SBA and the procuring agency.

If the contractor's proposal varies significantly from the government estimate, the government estimate should be verified and the contractor made aware that his proposal appears questionable and in what area it appears so.

Deficiency: In the past, there were no guidelines for establishing criteria as to when a contractor was to be terminated or was ready to "graduate" or complete the program. The new SOP issued by the SBA now contains such guidelines but they are not specific in that they have not been quantified.

Recommendation: That specific graduation criteria be established and documented by the local SBA officer for each 8(a) contractor as he enters the program.

Deficiency: Construction and maintenance contracts must normally be performed by local contractors. Therefore, to consummate an 8(a) award for a construction or maintenance contract requires that the contractor be matched with a job he can perform in his local area. The Navy's 8(a) support goals are presently established at the headquarters level and eventually distributed through the chain of command to various local procuring offices. To match the type of work with a corresponding construction contractor in a local area is extremely difficult when done from the headquarters level.

Recommendation: That the SBA and procuring agencies implement a "Local Task Force Concept" for establishing support goals in the area of construction and maintenance. These goals will then start at the bottom of the command chain where local requirements can be matched with local 8(a) contractor needs and work their way to the top for final

approval. At the top, local goals will be examined to insure that they are in consonance with long-range and overall program objectives. Approved goals will then be promulgated to local activities for implementation.

Deficiency: NAVFAC is responsible for meeting the Navy's 8(a) support goals in the area of shore facilities construction and maintenance. Since NAVFAC only has direct control over less than one-half of the total dollar volume of funds available for construction and maintenance work, NAVFAC does not have authority commensurate with its responsibility. The remaining funds are under the control of other Navy activities and commands, yet no responsibility has been placed on them for supporting the program.

Recommendation: That the ASN(I&L) issue official directives to these other commands and activities informing them of the purpose of the 8(a) program and outlining the need for their support for the program. Due to its primary mission, the Navy's command and resource management system is not designed to support the 8(a) program and therefore is not structured to provide NAVFAC the needed authority. The authors therefore believe this recommendation to be the only feasible solution to this deficiency.

In addition to these recommendations, other related recommendations were made. A brief summary of these related recommendations and the page on which they can be found follows.

That if the SBA is to require control by disadvantaged persons, it should provide more definitive guidelines as to the meaning of control. Page 48

That the SBA make its procedures for selecting a contractor to perform a specific contract, more formal. Pages 81-82.

That the ASPR be modified to provide the EFD's and pertinent other procurement offices authority to award contracts to the SBA and approve the results of the negotiations. Page 91.

That responsibility for the 8(a) program at the local procurement office level be placed with the Small Business Specialist attached to the procuring office, in order to separate as much as possible the responsibility for meeting the procurement requirements of the agency from the responsibility for ensuring that the 8(a) program is supported. Page 112.

Although the authors were able to identify the aforementioned deficiencies concerning program efficiency, the effectiveness of the program could not be evaluated due to its newness and a lack of appropriate data. Although only 31 firms had graduated from the program from 1968 to August 1974 [Ref. 6, p. i], it was felt that the length of time to produce a viable company precluded any firm conclusions as to effectiveness at the time of this writing. The lack of meaningful data was the result of the absence of procedures by the SBA to obtain data measuring the viability of contractors after they completed the program--the only true indicator of the success of the program. It was therefore recommended that the SBA develop a procedure for monitoring contractors after they complete the 8(a) program, and develop criteria for determining whether the contractor continues to be successful.

Efforts to determine the cause of variation in the past performance of the Navy and NAVFAC in providing support for the 8(a) program were similarly unsuccessful. The data available were found to be incomparable, as they were influenced by variables which the authors were unable to quantify. A recommendation was made that the "Local Task Force Concept" be used to establish realistic goals upon which an agency's performance can be evaluated.*

In conclusion, the authors concur in the basic goal of the 8(a) program, which is to assist minorities. The authors believe the alternative system presented at the beginning of this chapter is a better method of providing assistance to minority contractors. If, however, the decision is made to retain the 8(a) program, the recommendations presented in this thesis should be implemented to maximize the program effectiveness as a tool for aiding minority firms.

*For discussion of this recommendation see Chapter IV.

APPENDIX A

SECTION 8(a) OF THE 1958 AMENDMENT TO THE SMALL BUSINESS ACT

Sec. 8(a) It shall be the duty of the Administration and it is hereby empowered, whenever it determines such action is necessary -

(1) To enter into contracts with the United States Government and any department, agency, or officer thereof having procurement powers obligating the Administration to furnish articles, equipment, supplies, or materials to the Government. In any case in which the Administration certifies to any officer of the Government having procurement powers that the Administration is competent to perform any specific Government procurement contract to be let by any such officer, such officer shall be authorized in his discretion to let such procurement contract to the Administration upon such terms and conditions as may be agreed upon between the Administration and the procurement officer; and

(2) To arrange for the performance of such contracts by negotiating or otherwise letting subcontracts to small business concerns or others for the manufacture, supply, or assembly of such articles, equipment, supplies, or materials, or parts thereof, or servicing or processing in connection therewith, or such management services as may be necessary to enable the Administration to perform such contracts.

* * * * *

Note: the Administration refers to the SBA

APPENDIX B

KEY PERSONNEL CONTACTED

- Mr. Bernard Barston, Small Business/Economic Utilization
Advisor, Naval Facilities Engineering Command,
Washington, D. C.
- Mr. Richard Beans, Small Business Administration,
Washington, D. C.
- Mr. Ernest L. Bernhardt, Small Business Specialist, Chesapeake Division, Naval Facilities Engineering
Command, Washington, D. C.
- Mr. Eugene J. Birsinger, Business Development Specialist,
San Francisco District, Region IX, Small
Business Administration.
- Mr. D. C. Buell, Assistant Regional Director for Procurement Assistance, Region I, Boston, Small
Business Administration.
- Mr. Frank Chieffalo, Small Business Specialist, Northern
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- Mr. James C. Cravens, Special Assistant to the Officer in
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- LCDR James Doeblner, CEC, USN, Resident Officer in Charge
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- Mr. Stanley Franklin, Head, Stateside Branch, Construction
Division, Atlantic Division, Naval Facilities
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- Mr. Stephan L. Keleti, Assistant Director, General Government
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- Mr. Joseph Kernan, Chief, Program Support Division, Office
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- Mr. John Landicho, Associate Director, General Government
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- Mr. Willie Leftwich, Hudson, Leftwich & Davenport - Attorneys
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Mr. Joseph A. Monteleone, Chief, Office of Business Development, Region III, Philadelphia, Small Business Administration.

Mr. Thomas Page, Director, Contracts Division, Southern Division, Naval Facilities Engineering Command, Charleston, S. C.

Mr. Julio Perez, Program Control Analyst, Office of Business Development, Small Business Administration, Washington, D. C.

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Honorable Morris Questal, Special Assistant for Small Business and Economic Utilization, Office of the Assistant Secretary of the Navy (Installation and Logistics).

Mr. R. Robertory, Head, Contracts Procedures Branch, Naval Facilities Engineering Command, Washington, D. C.

Mr. Richard Sadowski, Director, Reports Management Division, Small Business Administration, Washington, D. C.

Mr. George W. Schlink, Contract Negotiator, San Francisco District, Small Business Administration.

Mr. John Shepard, Assistant to the Director, Small Business and Economic Utilization Policy, Department of Defense, Washington, D. C.

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APPENDIX C

THE SMALL BUSINESS ADMINISTRATION

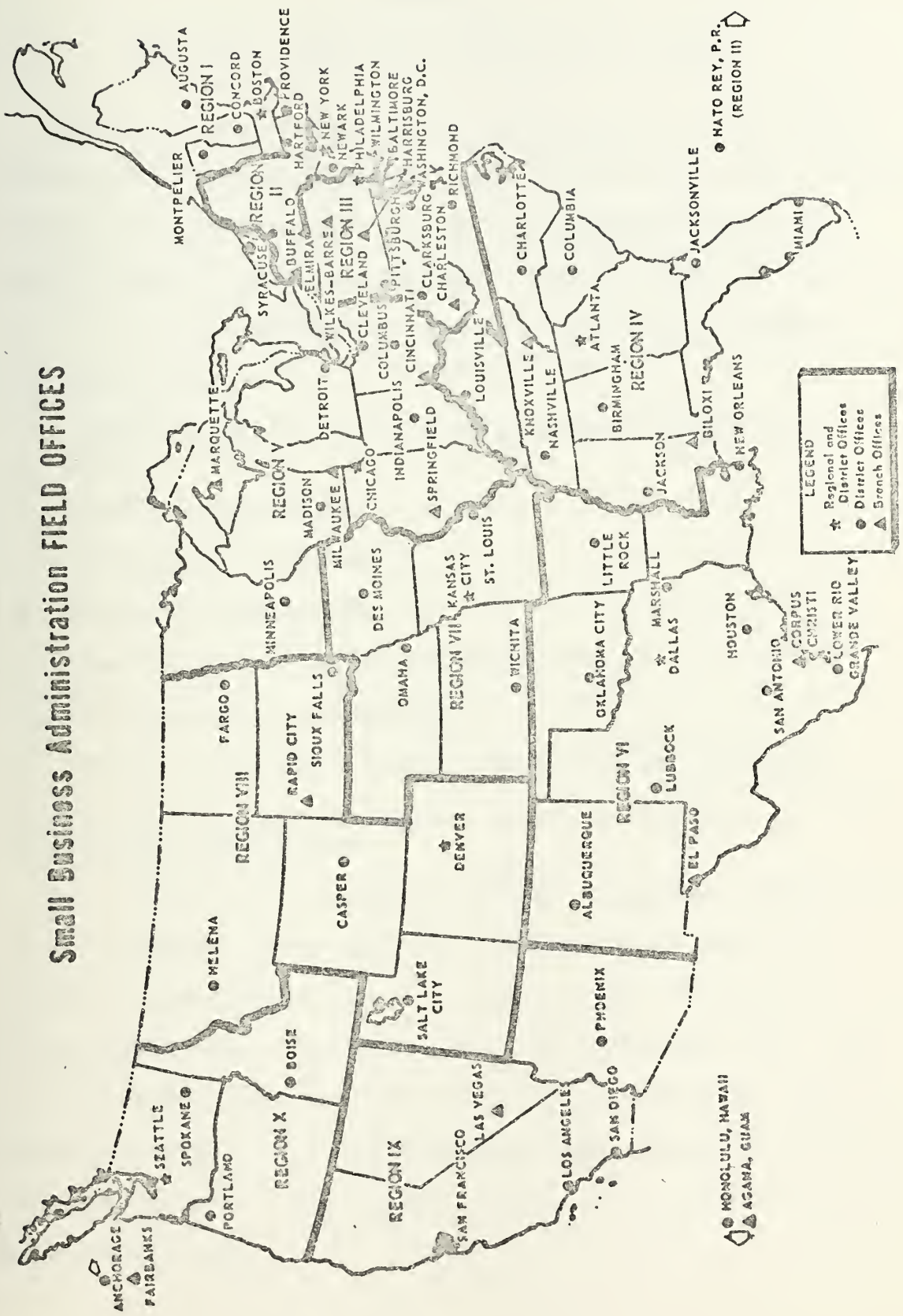
The Small Business Administration (SBA) is an agency of the federal government established to aid the small business sector of the U. S. economy. Headquartered in Washington, D. C. and headed up by a civilian administrator, the SBA's responsibilities include:

1. Aiding, counseling, assisting, and protecting the interests of small business.
2. Insuring that small business concerns receive a fair proportion of government purchases, contracts, and subcontracts.
3. Making loans to small business concerns.
4. Improving the management skills of small business owners, potential owners, and managers.
5. Conducting studies of the economic environment.

At the present time, the SBA administers some 17 programs, of which the 8(a) program is one. To accomplish its mission, the SBA operates 10 regional offices and 81 branch and district offices. The geographical distribution of the SBA regional offices is depicted on the accompanying map.

The responsibility for the conduct of the 8(a) program falls under the jurisdiction of the Office of Business Development within the SBA organization. This office's director reports directly to the Associate Administrator for Procurement Assistance, who in turn, reports directly to the Administrator of the Small Business Administration.

Small Business Administration Field Offices



APPENDIX D

THE NAVAL FACILITIES ENGINEERING COMMAND

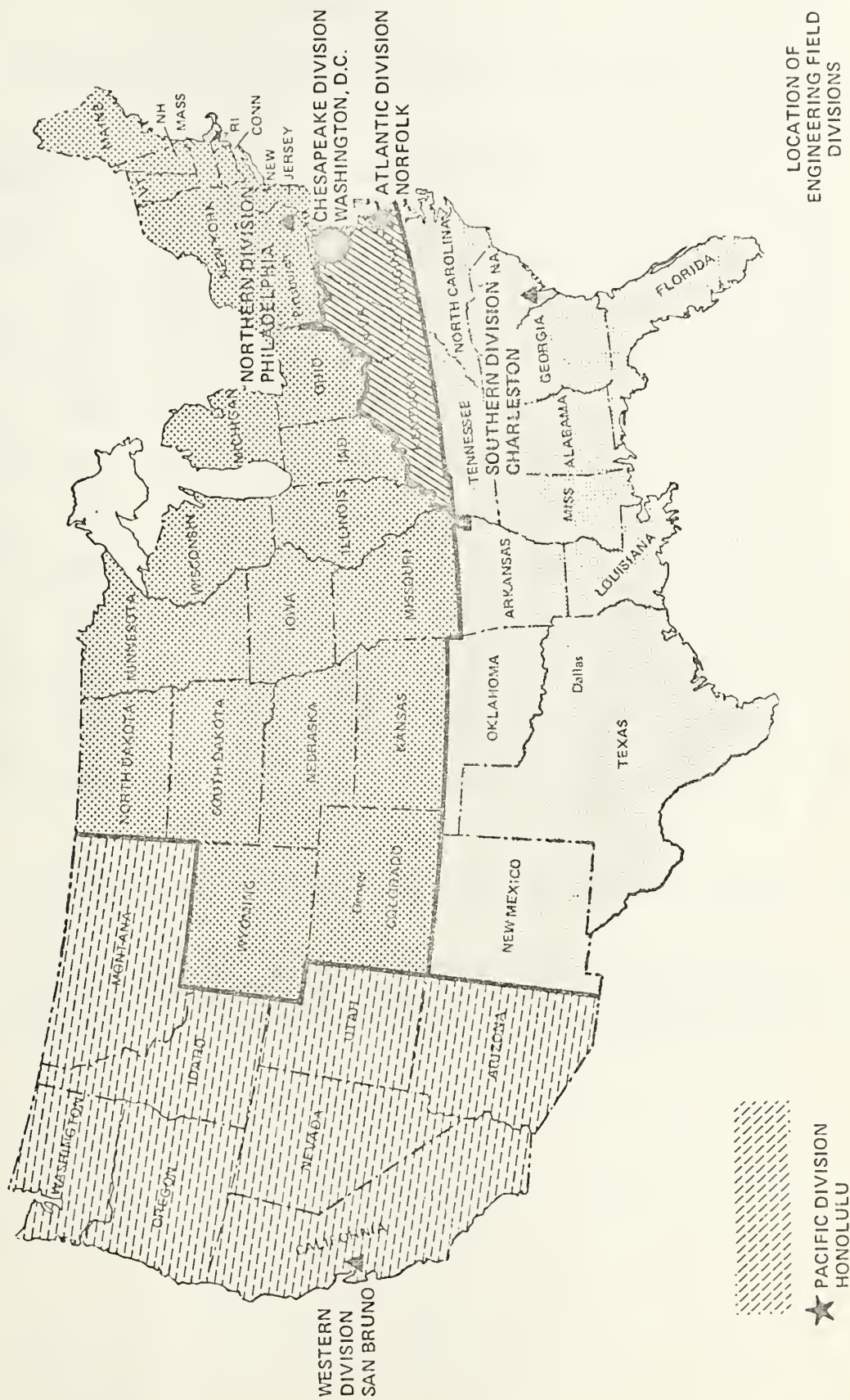
The Naval Facilities Engineering Command is one of six subordinate systems commands under the Chief of Naval Material. Located in Washington, D. C., it is commanded by a rear admiral commissioned in the Civil Engineer Corps of the U. S. Navy. The Naval Facilities Engineering Command (NAVFAC) is responsible for:

1. Administration of the Navy military construction program.
2. Facility planning.
3. Facility maintenance.
4. Utility operations.
5. Real Property Inventory management.
6. Transportation management.
7. Natural resources and pollution control programs.
8. Providing engineering and technical services related to nuclear shore power.

To accomplish its mission, NAVFAC delegates authority to six Engineering Field Divisions (EFD). These EFD's are located in Washington, D. C., Norfolk, Va., Charleston, S. C., Philadelphia, Pa., San Bruno, Ca., and Honolulu, Hi. Each of these EFD's exercise their authority throughout the geographical region they are assigned. The respective regions are depicted on the accompanying map. The responsibilities of the EFD's are:

1. Planning, design, and construction of public works, public utilities, and special facilities of the Navy and other federal agencies, as assigned.
2. Acquiring and disposal of real estate for the Navy.
3. To advise and assist in the administration of facilities management resources.
4. To direct and administer the assignment, replacement, disposal, maintenance, and utilization of transportation, weight-handling, and construction equipment under the cognizance of NAVFAC.
5. To assist activities in the application of programs that are assigned to NAVFAC for technical or management direction.
6. Other duties as may be directed by NAVFAC.

NAVFAC is the only agency authorized to award contracts for construction and maintenance of the Navy's shore establishment. This authority is delegated by the Commander, NAVFAC to the various EFD's, and in turn, delegated by the EFD's to various field representatives. These representatives are located at the EFD's and at numerous activities throughout the Navy.



APPENDIX E

COMPARISON OF EFD AND ACTIVITY SET ASIDES

ENGINEERING FIELD DIVISIONS		FISCAL YEAR							
		71		72		73		74	
		No.	\$	No.	\$	No.	\$	No.	\$
Northern Division	EFD	154	14.1	200	15.8	167	11.1	174	13.1
	Activity	607	11.1	645	16.4	600	14.5	543	15.7
Atlantic Division	EFD	118	10.9	102	8.9	100	13.1	106	13.1
	Activity	458	10.4	615	17.7	506	14.9	451	13.5
Southern Division	EFD	204	18.9	259	20.9	226	17.4	231	17.0
	Activity	810	13.0	599	11.3	508	13.4	533	19.5
Western Division	EFD	184	16.1	195	24.7	176	20.7	162	19.8
	Activity	699	16.1	668	17.9	713	22.4	771	23.5
Chesapeake Division	EFD	83	7.5	104	10.9	133	12.6	153	15.1
	Activity	323	6.5	423	9.8	403	12.8	337	9.0

Note: \$ in millions. Totals reflect all contract awards for \$500,000 and less.

Source: Data compiled by the authors from Contract Summary Reports(NAVDOCK 1883) prepared by the Engineering Field Divisions of the Naval Facilities Engineering Command.

	71	72	73	74
Total	8(a) % of Total	8(a) % of Total	8(a) % of Total	8(a) % of Total
DepartmentSet-asides Award	Total Set-Asides Award	Total Set-Asides Award	Total Set-Asides Award	Total Set-Asides Award

ARMY	552,557	10,242	1.85	600,844	33,420	5.56	772,481	55,303	7.16	805,427	81,824	10.15
NAVY	266,221	5,100	1.92	395,089	11,286	2.86	413,763	16,815	4.06	426,703	16,037	3.76
AIR FORCE	284,920	5,480	1.92	323,455	18,894	5.84	366,161	15,720	4.29	414,935	30,735	7.41
DSA	512,278	6,585	1.28	506,333	10,202	2.01	435,907	9,950	2.28	318,140	19,465	6.12
TOTAL												
DOD	1,615,975	27,406	1.7	1,825,837	73,802	4.04	1,988,312	97,788	4.92	1,965,205	148,061	7.53
NAVFAC	148,462	815	.55	213,772	1,250	.59	218,664	4,855	2.22	243,806	4,342	1.78

Note 1: 8(a) contracts are reported by agencies separately from other set-asides. For this reason, set-aside figures shown above were obtained by adding 8(a) awards and reported set-asides.

Note 2: Army figures include civil functions reported by the Army.

Source: Data was obtained from OSD Comptroller, The Office of the Chief of Naval Material, and the Small Business Administration. Computations made by authors.

APPENDIX G
EFD SMALL BUSINESS SET-ASIDES AND 8(a) AWARDS
(Thousands of \$)
Fiscal Year

EFD	71			72			73			74	
	Total Set-asides	8(a) Award	8(a)% of Total	Total Set-asides	8(a) Award	8(a)% of Total	Total Set-asides	8(a) Award	8(a)% of Total	8(a) Award	8(a)% of Total
Northern Division	25,452	252	.99	32,434	234	.72	26,606	1,006	3.78	2,054	6.66
Atlantic Division	21,638	338	1.56	26,698	98	.37	29,441	1,441	4.89	709	2.60
Southern Division	31,961	61	.19	32,504	304	.93	31,678	878	2.77	982	2.62
Western Division	32,357	157	.49	43,031	431	1.00	44,554	1,454	3.26	590	1.35
Chesapeake Division	14,007	7	.04	20,883	183	.88	26,170	77	.29	7	.03

Note 1: Set aside figures include 8(a) awards plus contracts awarded of a value equal to or less than \$500,000. Contracts awarded under \$500,000 used as a base for set asides because construction and maintenance contracts are required by law to be set aside for small business. Agencies do set aside contracts of a larger value but data as to amount was not available for the EFD's.

Source: Data was obtained from NAVFAC Contract Summary Reports (NAVDOCK 1883) for inclusive periods and from various EFD and NAVFAC headquarter's records. Computations made by authors.

GLOSSARY

ASBCA	Armed Services Board of Contract Appeals
ASPR	Armed Services Procurement Regulations
ASN(I&L)	Assistant Secretary of the Navy for Installations and Logistics
BDE	Business Development Expense
CFR	Code of Federal Regulations
CONUS	Continental United States
DOD	Department of Defense
EFD	Engineering Field Division
EO	Executive Order
GAO	General Accounting Office
MCON	Military Construction (refers to Appropriations)
NAVFAC	Naval Facilities Engineering Command
OASN(I&L)	Office of the Assistant Secretary of the Navy for Installations and Logistics
PL	Public Law
SBA	Small Business Administration
SDPA	Small Defense Plants Administration
SOP	Standard Operating Procedure (SBA Publication)

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